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The Honorable Stanley A. Bastian

UNITED STATES DISTRICT COURT OF THE WESTERN
DISTRICT OF WASHINGTON AT SEATTLE

CAROLINE ANGULO, a single person,
ERIC KELLER, a single person, EBEN
NESJE, a single person, KIRK
SUMMERS, a single person,
CHRISTINE BASH, individually and as
personal representative of the ESTATE
OF STEVEN BASH, RAYMOND
SUMERLIN JR. and MARYANN
SUMERLIN, a married couple, and
MARTIN WHITNEY and SHERRYL
WHITNEY, a married couple,

Plaintiffs, individually and
on behalf of others similarly situated.

v.

PROVIDENCE HEALTH & SERVICES
WASHINGTON, a non-profit
Washington Corporation, also d/b/a:
PROVIDENCE ST. MARY MEDICAL
CENTER, PROVIDENCE MEDICAL

NO. 25-CV-05029-SAB

**TRIAL BY JURY
REQUESTED**

**CLASS ACTION
COMPLAINT (SIXTH
AMENDED)**

GROUP d/b/a PROVIDENCE
MEDICAL GROUP SOUTHEAST
WASHINGTON NEUROSURGERY,
a/k/a PMG NEUROSCIENCE
INSTITUTE, WALLA WALLA a/k/a
NEUROSCIENCE INSTITUTE d/b/a
PROVIDENCE;
PROVIDENCE ST. JOSEPH HEALTH
also PROVIDENCE HEALTH &
SERVICES;
Dr. JASON A. DREYER, DO, and
LAURA DREYER, husband and wife
and the marital community thereof; Dr.
DANIEL ELSKENS MD, and JUDITH
CLARK, husband and wife and the
marital community thereof,

Defendants.

Plaintiffs allege:

I. INTRODUCTION

1.1 This is a class action case brought under color of Washington statutory and common law due to the actions and inactions of Defendants and, where applicable, the actions and inactions of Defendants' employees, contractors, and agents, to include, without limitation: Violation of the Washington State Consumer Protection Act (RCW 19.86.010 *Et. Seq*); Violation of the Washington State Criminal Profiteering Act (RCW 9A.82.100 and 9A.82.080); Violation of RCW 7.70.010 *et. seq.* (Actions for Injuries Resulting from Health Care); Corporate Negligence; Fraud; Unjust Enrichment; Negligent and Intentional Infliction of

1 Emotional Distress, Breach of Fiduciary Duty, and related claims. This class action
2 is based upon a “common course of conduct” spanning years, as further described
3 herein. *DZ Reserve v. Meta Platforms, Inc.*, 96 F.4th 1223, 1235 (9th Cir. 2024).

4
5 1.2 This case is about corporate and individual profiteering compounded
6 by a lack of corporate accountability and what Providence has since admitted was a
7 breach of the necessary “sacred trust” between a patient and his or her surgical doctor
8 and hospital. It is about a fraud perpetuated on Defendants’ surgical patients
9 resulting in significant and undeniable harm to them, a fraud played out through
10 spine surgeries that were medically unnecessary, overly complex, or otherwise
11 improper conducted by two neurosurgeons¹ financially incentivized by Providence
12 to do so for its own profit, who put their own profit ahead of patient safety and their
13 own ethical and legal responsibilities, resulting in patients’ emotional and physical
14 harm. An essential component of this fraud is the thousands of false claims filed
15 with government and private health care insurers, *e.g.*, the subject of a Providence
16 *qui tam* settlement with the federal and state governments in April 2022 (Exhibit 2),
17 with other false claims being the subject of a federal and state false claim lawsuit
18 commenced in January 2024 against the successor employer of Dr. Dreyer,
19 MultiCare (the MultiCare *qui tam*). (See *U.S. ex rel Palmer v. MultiCare Health*
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24 ¹ Plaintiffs reserve the right to expand the list of surgeons engaged in this scheme.

1 *Systems*, 2:22-cv-00068-SAB, ECF26 (E.D. Wash.) complaint at
2 <https://www.justice.gov/usao-edwa/media/1335396/dl?inline>).

3 1.3 For over 100 years, Defendant PROVIDENCE HEALTH &
4 SERVICES WASHINGTON (“PHS-WA”) has been a member of the medical
5 community in the state of Washington, including Eastern Washington. PHS-WA has
6 owned and operated St Mary Medical Center (SMMC), a hospital located in Walla
7 Walla, Washington since 1880. PROVIDENCE ST. JOSEPH HEALTH (“PSJH”)
8 is a Washington non-profit corporation which is the sole corporate owner of PHS-
9 WA and, upon information and belief, is the parent company of PHS-WA and shares
10 its headquarters with PHS-WA. These entities are collectively and interchangeably
11 known as Providence. *See also* ¶ 2.13, *infra*.

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13
14 1.4 Providence promotes itself as providing excellent, reliable, and
15 necessary medical care.

16 1.5 Providence employed Dr. DANIEL ELSKENS MD, and Dr. JASON
17 A. DREYER, DO, the “Doctors,” as neurosurgeons in its neurosurgery department
18 at SMMC.

19
20 1.6 In order to increase its own profits, Providence instituted a scheme,
21 pattern, policy and practice that incentivized Dr. Jason A. Dreyer, DO and Dr. Daniel
22 Elskens, MD to conduct unnecessary and improper spine surgeries at high volumes
23 to generate false reimbursement claims and records using a productivity and
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1 compensation metric with no cap on compensation that provided the neurosurgeons
2 financial incentives to perform a high volume of surgical procedures of greater
3 complexity to generate false health care claims, all involving work Relative Value
4 Unit (RVU), also providing Providence with additional profits. *See* ¶¶ 4.21-4.25.

5
6 1.7 To implement this scheme, Providence used a two-tier compensation
7 bonus structure, paying a dollar-rate-per-wRVU amount for work that brought the
8 Doctors up to the median annual national production level of neurosurgeons, and a
9 higher dollar-rate-per-RVU for aggregate work greater than median national
10 production levels.

11 1.8 That is, the Doctors were incentivized to reach production levels higher
12 than the median national annual performance thresholds for neurosurgeons. ■

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20 1.9 As a result of this scheme, pattern, policy, and practice, Dr. Dreyer
21 became the highest producing neurosurgeon in the entire Providence 51-hospital
22 system, earning between \$2.5 and \$3.1 million a year for the years he was employed,
23 well in excess of 90% of all surgeons, at one point making him the second highest
24

1 paid employee in all of Providence, with only the Providence CEO earning more,
2 despite the fact that Dreyer was hired at Providence just out of residency. Courts
3 have considered doctor compensation at or above 90% to be a red flag for false
4 claims based upon exceeding fair market value of medical services. *U.S. ex rel.*
5 *Bookwalter v. UPMC*, 946 F.3d 162, 172 (3d Cir. 2019). [REDACTED]
6 [REDACTED]
7 [REDACTED]
8 [REDACTED]
9 [REDACTED]

10 1.10 Both neurosurgeons ultimately resigned from Providence (Dr. Elskens
11 on or about May 8, 2017, and Dr. Dreyer on or about November 13, 2018). The
12 resignations came on the heels of, or immediately preceded, internal and Washington
13 Department of Health (DOH) administrative investigations into allegations that the
14 surgeons were performing medically unnecessary and otherwise improper spine
15 surgeries, all of which is below the medical and government standards of care.
16

17 1.11 After the resignation of Dr. Dreyer and Dr. Elskens, their supervisor,
18 another neurosurgeon employed by SMMC, Dr. David Yam, resigned and filed a
19 sealed complaint under the False Claims Act alleging Providence, Dreyer, and
20 Elskens were committing medical billing fraud with government funded insurance
21 providers. See Exhibit 1.
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1 1.12 On April 12, 2022, Providence announced a settlement of the *qui tam*
2 case with the United States Department of Justice (“DOJ”) for \$22.7 million, to
3 resolve allegations that Providence fraudulently billed Medicare, Medicaid, the
4 Washington Health Care Authority, and other government health care programs for
5 neurosurgery procedures by Drs. Dreyer and Elskens that did not meet criteria for
6 reimbursement, were medically unnecessary, or were otherwise improper because
7 false claims. See Exhibit 2.
8

9 1.13 In the Settlement, announced on April 12, 2022, Providence admitted
10 publicly for the first time that it was aware of concerns raised by Providence
11 personnel about these neurosurgeons’ negligent, unlawful, unethical, and fraudulent
12 treatment practices.
13

14 1.14 The Settlement (Exhibit 2) defines the “Covered Conduct” against
15 Providence as its claims “arising from allegedly false claims for payment submitted
16 by Providence to Medicare, Washington State Medicaid... during the relevant time
17 period for neurosurgery services performed by [the Doctors] that did not meet the
18 criteria for reimbursement under the Federal Health Programs, were medically
19 unnecessary, or were otherwise improper.” Recital H. The Covered Conduct
20 included that Providence “failed to take appropriate action in response to those
21 concerns,” and “failed to have and/or timely implement adequate safeguards and
22 controls with regard to [the Doctors] to timely prevent, detect, deter, and cease the
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1 performance of medically unnecessary neurosurgical procedures.” *Id.* Finally, the
2 Settlement disclosed that Providence used a wRVU-based compensation system
3 without caps under which “the greater the number of procedures of higher
4 complexity that the neurosurgeon performed, the greater the compensation the
5 neurosurgeon received.” *Id.*, Recital C. It noted Dreyer’s wRVU numbers from 2014
6 to 2018 exceeded 90% percentile for doctors, yielding corresponding compensation
7 from \$2.5 to \$2.9 million annually, a red flag for health care fraud. *See Bookwalter,*
8 *supra.*

10 1.15 The Settlement identified eight patterns of activity that the Doctors
11 routinely engaged in. *Id.*, Recital D. Providence agreed that these eight patterns of
12 activity were raised as concerns. *Id.*, Recital J. The routine patterns included, without
13 limitation, falsifying or exaggerating patient conditions to justify unnecessary or
14 overly complex surgeries in order to obtain reimbursement for surgical procedures;
15 performing surgeries that did not meet medical necessity guidelines; creating
16 excessive complications; performing surgeries on inappropriate candidates with
17 comorbidities; forcing multiple surgeries; failing to document properly; and, overall,
18 placing patient safety at risk. Recital D. *See also* ¶ 4.102, *infra*, for details of
19 allegations.

22 1.16 In January 2024, the Justice Department filed its *qui tam* health care
23 fraud lawsuit against MultiCare Health Systems (“MultiCare”) based on Dr.
24

1 Dreyer’s surgeries, *see* ¶ 1.2 *supra*. The government further articulated Providence’s
2 prior admissions regarding Dr. Dreyer² during its settlement with the DOJ back in
3 2022 to include claims regarding “negative outcomes,” of “permanent injury,” and
4 “death” and that Dr. Dreyer:

5
6 knowingly and inappropriately completed billing sheets and other
7 documentation that caused Medicare and other health insurance programs to
8 be falsely and fraudulently billed for medically unnecessary and inappropriate
9 neurosurgical services.

10 January 26, 2024 Complaint, ¶72; *see* ¶74 (“Providence admitted to facts including
11 the facts alleged *supra* at paragraphs 71 & 72”).

12 1.17 The concerns listed in the Providence Settlement and the 2024 DOJ *qui*
13 *tam* complaint against MultiCare were not created in a vacuum but rather in the
14 context of contemporaneous reports from at least two Providence neurosurgeons,³
15 namely:

16 (a) Dr. Matthew Fewel, a Providence neurosurgeon near Walla Walla who,
17 after being consulted to give second opinions by Dr. Dreyer’s surgical
18 patients, began to see concerning patterns and ultimately reported Dr.
19 Dreyer to the DOH in March 2019, expressing concern there were
20 “hundreds of similar cases,” including the “11 most egregious” examples
21 he had compiled, *see* Exhibit 5;

22 ² Dr. Dreyer was employed by MultiCare in 2019-2021, making his background at Providence
23 relevant.

24 ³ Exhibit 5 is excerpts of Dr. Fewel’s whistleblower report to the DOH, filed internally on March
4, 2019. Exhibit 6 is a series of emails in February 2020 between the Justice Department and
MultiCare Health Systems outside counsel, along with an attachment sent at that time by the
DOJ to MultiCare that gives details of Dr. Yam’s concerns reported to the DOJ. Both of these
exhibits have previously been filed publicly, either in *Palmer v. MultiCare*, Spokane County
Superior Court No. 21-2-01299-32 (e.g., Dkt. 480, Exh. H), or this case, ECF 93:87-93, 116-118.

1 (b) Dr. Yam, the head of neurosurgery at SMMC (Dreyer's supervisor), who
2 filed the 2020 *qui tam* complaint that resulted in the Settlement and who
3 also met with the Department of Justice in early 2020 to report his concerns
4 that, *inter alia*, "greater than 80 percent" of Dr. Dreyer's surgeries that he
5 reviewed between November 2017 and February 2018 contained these
6 kinds of major issues. See Exhibit 6. Dr. Yam claims that he ultimately
7 reported Providence to the Justice Department because for many years his
8 internal complaints about Dr. Dreyer's misconduct with his patients were
9 never acted upon by Providence;

10 (c) These lists of Providence patient casualties were compiled by the
11 Providence neurosurgeons who treated Dr. Dreyer's patients (Fewel) and
12 supervised both Doctors (Yam) in order to report this pattern of
13 misconduct to government authorities, including because of Providence's
14 continuing refusal to address it while profiting substantially from it; and

15 (d) Notwithstanding this established and admitted pattern of misconduct,
16 Providence continues to insist that its compensation system is not
17 responsible for the misconduct it incentivized, and this underscores the
18 need for the remedies, including injunctive relief, authorized in the
19 Profiteering and Consumer Protection Acts to deter and prevent such
20 misconduct.

21 1.18 For example, [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]

25 [REDACTED] Thus, while the agreed-upon pattern of concerns listed in the Settlement at
26 Recital D does not specify the number of patients affected, there is evidence to
27 support claims that the specific list of concerns found in the Settlement would apply

1 to “hundreds” of patients and greater than 80 percent of Dr. Dreyer’s surgical
2 patients at Providence. Upon information and belief, Dreyer and Elskens surgical
3 patients at Providence number at least 1,750 during their time at Providence,
4 according to Providence.
5

6 1.19 This was also the position of the DOJ, that the victims of these
7 medically unnecessary or otherwise improper surgeries by the Doctors number in
8 the “hundreds.”⁴

9 1.20 All these identified and admitted concerns make the related billings
10 false claims under state and federal law and, therefore, profiteering acts under RCW
11 9A.82.010(4)(hh), with their proceeds constituting unlawful proceeds of specified
12 unlawful activity as alleged herein, including under RCW 9A.83.010(7) and federal
13 health care fraud and false claims offenses for money laundering liability and
14 remedy purposes, as further described herein. Despite the many admissions by
15 Providence leading to it paying \$22.7 million under the Settlement Agreement,
16 including that this sum includes \$10 million in restitution, it still maintains in this
17 Court that it has admitted, and has, no liability for any false health claims.
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22 ⁴ Hill, *Providence to Pay \$22.7 Million to Settle Medicare, Medicaid Fraud Whistleblower*
23 *Complaint Brought Against two Walla Walla Neurosurgeons*, Spokes. Rev. (April 13, 2022 –
24 updated April 14, 2022) <https://www.spokesman.com/stories/2022/apr/13/providence-to-pay-227-million-to-settle-medicare-m/>

1 1.21 At no time prior to the April 12, 2022 publication of the Settlement
2 Agreement had PROVIDENCE disclosed publicly or directly to its patients that it
3 ever had any of these concerns about the Doctors. Despite these carefully concealed
4 concerns, Providence allowed both neurosurgeons to resign from their Providence
5 employment rather than report them to the National Practitioner Data Bank
6 (“NPDB”) or Washington State Department of Health (“DOH”) as required by law.
7 For example, under 42 U.S.C. § 11133(a)(1) of the Healthcare Quality Improvement
8 Act of 1986, and the NPDB guidelines, health care entities are required to report
9 surrenders of physician clinical privileges while they are under investigation.
10 Similarly, under RCW 70.41.210, Providence had reporting duties as to any
11 restriction or termination of the practice of a health care practitioner while the
12 practitioner is, *inter alia*, under investigation or in return for the hospital not taking
13 action. On November 11, 2022, the Department of Health found that Providence
14 violated its legal obligations to report Drs. Dreyer and Elskens to the Washington
15 DOH and the federal NDPB.
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18 1.22 Under these laws, and pursuant to common law, Providence had a
19 statutory and common law duty to disclose, including to the members of the class
20 for their benefit in making material decisions about their healthcare. These failures
21 to disclose by Defendants were intended to, and did, prevent discovery of their
22 claims by Plaintiffs.
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1 1.23 Providence was well aware of its duty to make such reports to the
2 NPDB and DOH. Upon information and belief, direct and circumstantial evidence
3 will show that Providence used its reporting obligations to control the Doctors'
4 behavior toward Providence and that the Doctors learned, through these actions, that
5 Providence was willing to negotiate away its obligation to report doctor conduct to
6 the NPDB, including using money, concealment, RVUs, improperly labelled RVU
7 payments (compensation for work not performed), in order to conceal Doctor
8 absences while on administrative leave/under investigation and to conceal their
9 reportable conduct. [REDACTED]
10 [REDACTED]
11 [REDACTED]
12 [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]
16 [REDACTED]. Providence's misuse of the

17 NDPB reporting system to conceal health care misconduct was intentional and for
18 the purpose of concealing Defendants' complicity in the ongoing healthcare fraud.
19

20 1.24 Dr. Dreyer and his colleague and friend from their Michigan residency
21 together, Dr. Sandquist, further corroborated Defendants' concerted concealment
22 efforts when Dr. Sandquist filed a false employment referral with MultiCare on Dr.
23 Dreyer's behalf, pursuant to Dr. Dreyer's instruction that Providence's position, as
24

per its “severance agreement” with him, was that Providence’s ongoing review of him, and curtailment of surgical rights, need not be reported to prospective employers. *See also* ¶¶ 4.89 & 4.94, *infra*. These coordinated and concerted failures to disclose by Defendants were intended to, and did, prevent Plaintiffs’ discovery of, and investigation of, the legal claims against the Defendants. They were also intended to prevent creating a record that would hinder the Doctors from becoming employed elsewhere, including at MultiCare, thereby maintaining the ongoing concealment for Defendants’ benefit.

1.25 This occurred despite Providence’s knowledge of the Doctors’ continuing wrongdoings for mutual profits. The internal complaints from doctors and staff are relevant not only to establish Defendants’ knowledge but also to prove willful blindness or recklessness, both of which are sufficient to establish health care fraud under 18 U.S.C. § 1347. *United State v. Walter-Eze*, 869 F.3d 891, 909 (9th Cir. 2017) (defendant “deliberately failed to investigate while being aware of a high probability of the” health care fraud).⁵

⁵ There “is no requirement [for federal false claims] of ‘specific intent to defraud,’ and liability can be found even in ‘the ostrich type situation where an individual has buried his head in the sand and failed to make simple inquiries which would alert him that false claims are being submitted.’” *United States v. Sutter Health*, 2024 WL 4112315, at *5 (N.D. Cal. Sept. 6, 2024) (quoting *Godecke ex rel. v. Kinetic Concepts*, 937 F.3d 1201, 1211 (9th Cir. 2019)). Reckless disregard of the truth in a claim is separately sufficient. *United States ex rel. Schutte v. SuperValu, Inc.*, 598 U.S. 739, 750 (2023) (“actual knowledge, deliberate ignorance, or recklessness will suffice”).

1 1.26 In this regard, Providence’s inaction when confronted with continuing
2 reports from its supervising neurologist (Dr. Yam) and other medical staff—
3 employees it pays for their skills—demonstrates that its acts and omissions were
4 intentional. Defendants acted at all relevant times with knowledge, deliberate
5 ignorance, or recklessness in committing their false healthcare claims
6

7 1.27 An example of Providence’s actual knowledge is a full-page
8 Providence advertisement in the Walla Walla Union Bulletin newspaper to
9 Providence patients, paid for by Providence and published on June 5, 2022. See
10 Exhibit 4. This advertisement is signed by “Reza Kaleel, chief executive, Providence
11 Southeast Washington.” *Id.*
12

13 1.28 Of note in this June 5, 2022 full page advertisement is Providence’s
14 apology to Plaintiffs for violating the sacred trust they placed in Providence, see
15 Exhibit 4:

16 We deeply regret the damage these events have caused to the sacred trust
17 many patients place in us. The actions of these former employees were not in
18 keeping with our values, and we are doing everything in our power to make
sure nothing of the sort happens again.

19 1.29 While admitting “regrettable” doctor conduct betraying its patients’
20 sacred trust, Providence continued its campaign to conceal its role and responsibility
21 by describing the misconduct as limited to the aberrant and isolated misconduct of
22 two unnamed Doctors. According to the ad, questions about their practices arose in
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1 “2017” and this led to a “thorough investigation” by Providence “resulting
2 in the surgeons leaving the organization in 2017 and 2018 respectively.” Exhibit 4.

3 1.30 Conspicuously absent from this patient communication was any
4 disclosure that: (i) the “thorough internal investigation” allegedly initiated in 2017
5 was only after repeated internal complaints by its neurosurgeons and staff since
6 2013; (ii) despite its allegedly “thorough investigation” and discovery in 2017,
7 Providence permitted both Doctors to leave its employ without making any patient
8 or public disclosure, much less the legally required disclosures, about any of this
9 “regrettable” misconduct at Providence; and (iii) the Doctors’ conduct was
10 incentivized and rewarded by Providence’s compensation system that promoted the
11 Doctors’ false claims from which Providence benefitted and for which it was legally
12 accountable, despite multiple continuing warnings that its financial incentives. were
13 inducing unnecessary and otherwise improper surgeries by the Doctors. The notice
14 fails to disclose the role of Providence’s compensation system in inducing the
15 misconduct, or Providence’s resulting profits.

16 1.31 The advertisement urges patients to contact Providence at a phone
17 number if they have concerns about their healthcare by the two unnamed doctors “to
18 make sure they have the best possible information to make decisions about their
19 health.” Exhibit 4. [REDACTED]
20 [REDACTED]
21 [REDACTED]
22 [REDACTED]
23 [REDACTED]
24 [REDACTED]

1 [REDACTED] Providence's solicitation of patient communications about their
2 remedial healthcare needs while limiting responsibility to the Doctors is further
3 evidence of Providence's effort to conceal its involvement in, and profit from, the
4 misconduct for which it had just paid \$22.7 million to settle with the government.
5 *See also M.N. v. MultiCare Health Systems*, 2 Wn.3d 655, 541 P.3d 346 (2024)
6 (emotional distress claim of class of patients receiving notification letter of risk sent
7 to treated and untreated patients).
8

9 1.32 At all relevant times, including in the publication of this post-hoc
10 message of alleged concern for its patients' health, as well as solicitation of contacts
11 about their health, Providence owed a fiduciary duty to its patients, including the
12 duty of candor.
13

14 1.33 In contrast to this June 2022 public admission by Providence of a
15 breach of patient sacred trust and claim discovered during its "thorough internal
16 investigation" in 2017 resulting in the Doctors' employment termination,
17 Providence claimed in this Court in January 2024 that it correctly had not admitted
18 any liability in the DOJ Settlement Agreement, and instead it would show that in
19 2017 it conducted an "outside review" of medical necessity in SMMC's
20 neurosurgery program, concluding "the program was well-run and provided care
21 consistent with applicable standards." ECF 136:12.
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1 1.34 Upon information and belief, Providence was aware, or should have
2 been aware at or near the time of hiring these neurosurgeons and throughout their
3 credentialing and privileging procedures that they consistently put patients' health
4 and safety at dire risk while making decisions based upon personal financial
5 recovery, as promoted and profited by Providence, rather than medical necessity or
6 standards; yet Providence actively concealed that information up to and including
7 failing to report them to the NPDB or the DOH, allowing the neurosurgeons to depart
8 their employ with a publicly clean record and without any disclosure to any plaintiff
9 of the concerns to which Providence later admitted in the Settlement Agreement
10 Recitals A-F. MultiCare would later defend its hiring of Dr. Dreyer in part by
11 claiming it repeatedly checked the NPDB's records in May 2019 and found no
12 adverse report on Dr. Dreyer from Providence. *U.S. ex rel. Palmer v.*
13 *MultiCareHealth Systems*, No. 22:-cv-00068-SBB, ECF 46:355 (E.D. Wash. May
14 6, 2024) (MultiCare Statement of Material Facts Not in Dispute).

17 1.35 Despite being placed on administrative leave at Providence, Dr. Dreyer
18 was successfully recruited by MultiCare in Spokane, Washington, where he
19 continued his pattern and practice of negligent, violative, unethical, and fraudulent
20 treatment practices to generate false claims, national productivity ranking in the late
21 95th to 99th percentile, and false health care claim reimbursement to generate
22 unlawful proceeds for MultiCare and compensation for himself. Upon his hiring,
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1 MultiCare accelerated Dreyer's eligibility for wRVU incentive compensation, and
2 he immediately surpassed the compensation of every non-management MultiCare
3 employee in its 13 hospital network.

4
5 1.36 Likewise, when Dr. Elskens was allowed to resign in 2017 without
6 being reported to the NPDB, he secured employment in Ohio, where, *inter alia*, a
7 patient death occurred.

8 1.37 Although MultiCare knew or should have discovered concerns related
9 to Dr. Dreyer's gross misconduct at Providence through the extensive background
10 investigation that is required before hiring/retaining a surgeon and providing
11 privileges to practice in its medical facilities, it was reasonably foreseeable that:
12

13 (a) Providence's failure to report Dr. Dreyer, to the NPDB or DOH would
14 prevent, hinder, or delay discovery of the substandard, fraudulent, and
15 faulty medical care that Dr. Dreyer had provided previous patients to the
16 financial benefit of Providence;

17 (b) Providence's concealment of the results of its allegedly thorough
18 investigation of Dr. Dreyer's surgeries upon its patients, including by
19 agreeing not to disclose them to prospective employers of Dr. Dreyer,
20 would result in continued harm to future patients, including those of his
21 future employer MultiCare;

22 (c) Providence's effort to restrict and control referrals of Dreyer patients to his
23 known associate Dr. Sandquist, who agreed to conceal Dr. Dreyer's inactive
24 status from MultiCare, would impact the care that his previous patients
received in follow-up to Dr. Dreyer's faulty and fraudulent medical care;
and

(d) Providence's concealment from its patients of the fact and details of
Providence's betrayal of its patients' trust, including its profiteering from

1 it, would cause severe anxiety in Dreyer's prior and future patients once it
2 was disclosed to them.

3 1.38 In response to this pattern of negligent, unlawful, unethical, and
4 fraudulent treatment practices of the Doctors under the direct authority and
5 supervision of Providence, and fraudulent concealment thereof by all Defendants,
6 this cause of action is brought by the class of Providence surgery patients of the
7 Doctors whose lives have been forever changed as a result of the actions or
8 omissions of the Defendants herein named, and by the class of MultiCare patients of
9 Dr. Dreyer who should never have become MultiCare patients because he would not
10 have been hired absent Providence's fraudulent concealment of the Defendants'
11 profiteering activity.
12

13 1.39 Filed as a Class Action, this Cause is brought on behalf of the classes
14 of surgical patients adversely affected by the Defendants' course of unlawful
15 conduct – the group of patients impacted by the negligent, unlawful, unethical, and
16 fraudulent treatment practices and false claims of Dr. Dreyer and Dr. Elskens under
17 the direct supervision, authority, and incentive of PROVIDENCE, and along with
18 the fraudulent concealment thereof by all Defendants, and seeks redress on behalf of
19 those named and unnamed class members.
20

21 II. PARTIES

22 2.1 Plaintiffs, on behalf of themselves and those similarly situated, reallege
23

1 and incorporate by reference paragraphs 1.1 through 1.39 as if fully set forth herein.

2 2.2 Plaintiff CAROLINE ANGULO, a single person, representing herself
3 and the Providence Class, was at all times relevant hereto residing in Walla Walla
4 County, Washington.

5 2.3 Plaintiff ERIC KELLER, a single person, representing himself and the
6 Providence Class, was at all times relevant hereto residing in Union County, Oregon.

7 2.4 Plaintiff EBEN NESJE, a single person, representing himself and the
8 Providence Class, was at all times relevant hereto residing in Columbia County,
9 Washington.

10 2.5 Plaintiff KIRK SUMMERS, representing himself and the Providence
11 Class, was at all times relevant hereto residing in Columbia County, Washington.

12 2.6 Plaintiff CHRISTINE BASH, individually and as personal
13 representative of the ESTATE OF STEVEN BASH, is the surviving wife of
14 STEVEN BASH and the personal representative of the ESTATE OF STEVEN
15 BASH with probate pending in Walla Walla County, representing herself and the
16 ESTATE, is a member of the Providence Class and was at all times relevant hereto
17 a resident of Walla Walla County, Washington. STEVEN BASH was also a resident
18 of Walla Walla County at the time of his death at the age of 51.

19 2.7 Plaintiffs RAYMOND SUMERLIN JR. and MARYANN
20 SUMERLIN, representing themselves and the MultiCare Class, were at all times
21

1 relevant hereto a married couple, residing in Walla Walla County, Washington.

2 2.8 Plaintiffs MARTIN WHITNEY and SHERRYL WHITNEY,
3 representing themselves and the MultiCare Class, were at all times relevant hereto a
4 married couple, residing in Stevens County, Washington.

5 2.9 Plaintiffs, on behalf of themselves and those similarly situated, bring
6 claims against DEFENDANTS as pled herein, separately and, where necessary, are
7 pled in the alternative, including for violations of
8

- 9 • RCW 9A.82.080 (Use of Criminal Profiteering Proceeds) and 9A.82.100
10 (Criminal Profiteering)
- 11 • RCW 19.86 et seq. (Unfair Business Practices/Consumer Protection)
12 (“CPA”)
- 13 • RCW 7.70 et seq. (“Actions for Injuries Resulting from Health Care”),
14 including the lack of informed consent, and
- 15 • Corporate negligence (under both RCW 7.70 and under common law), by,
16 e.g., negligent hiring and supervision as more fully alleged below, *see e.g.*,
17 *M.N. v. MultiCare Health Systems*, 2 Wn.3d 655, 541 P.3d 346 (2024) for
18 Providence class members,
- 19 • Negligent and intentional infliction of emotional distress, including as
20 authorized in *M.N. v. MultiCare Health Systems*, 2 Wn.3d 655, 541 P.3d
21 346 (2024),
- 22 • The other common law tort and statutory actions alleged below, including,
23 without limitation, breach of fiduciary duty, unjust enrichment, failure to
24 provide or obtain informed consent, fraud, misrepresentation, and other
 unlawful conduct as set forth below.

2.10 At all relevant times, each Plaintiff, named and unnamed, was “a person

1 who sustain[ed] injury to his or her person, business, or property by an act of criminal
2 profiteering that is part of a pattern of criminal profiteering activity,” or by use of
3 criminal profiteering proceeds, offenses defined respectively in RCW
4 9A.82.100(1)(a) and RCW 9A.82.080.

5
6 2.11 At all relevant times, each Plaintiff, named and unnamed, was also a
7 “person who was injured in his or her business or property” by a violation of the
8 CPA. *See* RCW 19.86.090.

9 2.12 At all relevant times, each Plaintiff, named and unnamed, was a person
10 to whom Defendants owed duties, including fiduciary duties, under RCW 7.70,
11 under corporate negligence, and/or through common law/statute, including RCW
12 70.41.210, which requires hospitals to report to the Department of Health, any
13 restriction or termination of the practice of a health care practitioner while the
14 practitioner is, *inter alia*, under investigation or in return for the hospital not taking
15 action.
16

17 2.13 Defendant PROVIDENCE ST. JOSEPH HEALTH, PROVIDENCE
18 HEALTH & SERVICES, Defendant PROVIDENCE HEALTH & SERVICES
19 WASHINGTON also d/b/a PROVIDENCE ST. MARY MEDICAL CENTER and
20 PROVIDENCE MEDICAL GROUP d/b/a PROVIDENCE MEDICAL GROUP
21 SOUTHEAST WASHINGTON NEUROSURGERY a/k/a PMG NEUROSCIENCE
22 INSTITUTE WALLA WALLA a/k/a NEUROSCIENCE INSTITUTE d/b/a
23

1 PROVIDENCE (hereinafter referred to collectively and individually as
2 “PROVIDENCE”) are Washington state nonprofit corporations with primary places
3 of business located 1801 Lind Avenue, Southwest, Renton, WA 98057, which is
4 geographically located in King County, Washington.⁶ Providence has offices to
5 conduct business, regularly conducts business, and manages medical facilities across
6 the state of Washington, including in Walla Walla, Washington. At the outset of this
7 litigation, defendant Providence Health & Services-Washington asserted that it has
8 no parent, ECF 2, and it has not modified this parent disclosure herein. More
9 recently, in litigation within this District, Providence St. Joseph Health has claimed
10 to be the parent company for Providence Health & Services-Washington, after
11 earlier claiming that it lacked a parent. *See Batten v. Providence St. Joseph Health*,
12 No. 2:23-CV-00097-TOR (E.D. Wash.) (*cf.* Batten ECF 16 (“Providence Health and
13 Services-Washington has no parent corporation”) *with* ECF 28 (“Providence St.
14 Joseph Health is the parent company for Providence Health & Services-
15 Washington”)). Regardless of this defendant dissonance, these Defendants entities
16 are related nonprofit entities that share a uniform management structure and
17 hierarchy, with ultimate management and control possessed by Providence St.
18
19
20
21
22

23 ⁶ Unless otherwise indicated: reference to, and allegations regarding PROVIDENCE is/are
24 intended to include reference to/allegations about agents, contractors, and/or employees of
PROVIDENCE.

1 Joseph Health (PSJH). Each defendant entity shares the same borrowing facility and
2 is known as an Obligated Group Member with PSJH known as both an Obligated
3 Group Member and the Obligated Group Agent of all other entity borrowers. In
4 addition, upon information and belief, PSJH controls the management and finances
5 of the other corporate defendants through a Treasury Team it operates to set and
6 control budgets of the other nonprofit defendants, which exercises the authority to
7 transfer (sweep) revenues earned from their health care claims for its use and income
8 generation. From its financial vantage point, including joint officers on the Treasury
9 Team, PSJH had direct access to, and control over, the proceeds generated by the
10 fraudulent scheme.
11

12
13 2.14 At all relevant times hereto, Defendant JASON A. DREYER, DO was
14 a licensed physician, and citizen of Washington residing in, and practicing medicine
15 in Walla Walla County or Spokane County, Washington, as an employee or
16 ostensible agent of either Providence or at MultiCare Health System D/B/A
17 MultiCare Deaconess Hospital / Rockwood Clinic (collectively MULTICARE). At
18 all times relevant hereto, Jason A. Dreyer held himself out to be a medical care
19 provider whose services were offered to the public for compensation. Jason A.
20 Dreyer is married to LAURA DREYER and all acts or omissions committed by
21 JASON A. DREYER, DO were done both for, and on behalf of, the community
22 composed of JASON A. DREYER, DO and his wife, LAURA DREYER.
23
24

1 2.15 At all relevant times hereto, Defendant DANIEL ELSKENS, MD was
2 a licensed physician, and citizen of, *inter alia*, Washington, Michigan, and Ohio, and
3 did reside in, and practice medicine in, Walla Walla County, Washington, as an
4 employee or ostensible agent of Providence. At all times relevant hereto, Daniel
5 Elskens held himself out to be a medical care provider whose services were offered
6 to the public for compensation. Daniel Elskens is married to JUDITH CLARK and
7 all acts or omissions committed by DANIEL ELSKENS, MD were done both for,
8 and on behalf of, the community composed of DANIEL ELSKENS, MD and his
9 wife, JUDITH CLARK.
10

11 **III. JURISDICTION AND VENUE**

12 3.1 Plaintiffs, on behalf of themselves and those similarly situated, reallege
13 and incorporate by reference paragraphs 1.1 through 2.15 as if fully set forth herein.
14

15 3.2 The State of Washington has subject matter jurisdiction over this action
16 pursuant to RCW 2.08.010 because most alleged acts occurred in this State. In
17 addition, upon information and belief, a majority of the members of the proposed
18 class are citizens of Washington.
19

20 3.3 Jurisdiction and venue are proper in and for the Superior Court of
21 Washington for King County because at all times relevant hereto, Defendant
22 Providence's controlling business offices were located in King County, Washington
23 and removal to federal court is not authorized or justified under 28 U.S.C. § 1453.
24

IV. TIMELINE AND FACTS

4.1 Plaintiffs, on behalf of themselves and those similarly situated, reallege and incorporate by reference paragraphs 1.1 through 3.3 as if fully set forth herein.

4.2 Medically unnecessary services include any surgical intervention that is either not needed, not indicated, or not in a patient's best interest when weighed against other available options, including conservative measures.⁷ While medically unnecessary services fall below the medical standard of care, they can independently violate federal and state law when they are presented or certified for a claim for government or private insurer reimbursement. *See e.g., Winter ex rel. United States v. Gardens Regional Hospital and Medical Center*, 953 F.3d 1108, 1119 (9th Cir. 2020) (certification of medical necessity not honestly held); *United States v. Solakyan*, 2024 WL 4341365, *3 (9th Cir. Sept. 30, 2024) (fraud offense for medically unnecessary testing); [42 U.S.C. § 1395y\(a\)\(1\)\(A\)](#); 42 C.F.R. § 412.46(a)(2); RCW 48.80.030(2) (false claim of medical necessity). In addition, such surgeries generate false records to implement and conceal the fraudulent reimbursement claims. These false records complicate further medical care because their false nature is undisclosed. Separately, presentation of claims to

⁷ AlAli, *Unnecessary spine surgery: can we solve this ongoing conundrum?* Front Surg. 2023 Aug 25. *See link:* 10.3389/fsurg.2023.1270975. Stahel and Kim, *Why do surgeons continue to perform unnecessary surgery?* *Patient Saf Surg.* (2017) Published 2017 Jan 13. *See link:* 10.1186/s13037-016-0117-6.

1 federal programs require certifications not only of medical necessity but also that
2 the records used to make claims are themselves truthful and not false. *United*
3 *States v. United Healthcare Insurance Co.*, 848 F.3d 1161, 1172 (9th Cir. 2016)
4 (“makes, uses, or causes to be made or used, a false record or statement material
5 to a false or fraudulent claim,” quoting 31 U.S.C. § 3729(a)(1)(B)). Cf. MultiCare
6 *qui tam* complaint, ¶6 (alleging MultiCare used “accompanying false records and
7 statements that that MultiCare knowingly made and used, material to [Dryers’ false
8 and fraudulent claims”).

10 4.2 Performing unnecessary surgery on a patient without that patient's
11 knowledge that the surgery is unnecessary is a deviation from the standard of care
12 that requires physicians to possess and apply the degree of skill, knowledge and care
13 that a reasonably qualified physician in the same or similar community would
14 apply.⁸ It also violates the fiduciary duty of disclosure, and the federal and state
15 standards for making health care insurance claims. *See, e.g., Winter v. Gardens*
16 *Regional Hospital and Medical Center*, 953 F.3d 1108, 1118 (9th Cir. 2019) (false
17 certification of medical necessity a false claim).

19 4.3 Here, unnecessary procedures were, at a minimum, motivated by
20 financial gain, and revealed that Providence has oversight or supervision problems
21

23 ⁸ *Walsh v. Barry-Harlem Corp.*, 272 Ill. App. 3d 418, 423, 208 Ill. Dec. 558, 561, 649 N.E.2d
24 614, 617 (1995); (See *Purtill v. Hess* (1986), 111 Ill. 2d 229, 489 N.E.2d 867, 95 Ill. Dec. 305.)

1 and/or deliberately promoted the financial scheme of the Doctors for its own profit.⁹

2 4.4 Every Providence surgery conducted by the Doctors (1,750, per
3 Providence) was a part of the scheme; every surgery conducted was the subject of
4 the Settlement Agreement reached between Providence and the DOJ in 2022 (*e.g.*,
5 are described as part of the “covered conduct” under Recital H therein); and every
6 surgery conducted resulted in damage to the person creating, at a minimum, severe
7 emotional distress for having been a part of the unlawful scheme.
8

9 4.5 Providence also dba SMMC knew, designed, incentivized and/or
10 promoted, or, in the exercise of reasonable care, should have known that Drs. Dreyer
11 and Elskens were performing unnecessary surgeries during this period pursuant to a
12 financial scheme that harmed each and every surgery patient and ignored and/or
13 concealed and/or otherwise acted improperly with regard to the issue because the
14 income from the surgeries was increasing profit margins for Providence SMMC.
15

16 4.6 As a result of these surgeries, the lives of every surgical patient of the
17 Doctors have been permanently altered through, *inter alia*, emotional distress and
18 economic damage, as well as surgical and post-surgical changes and related pain and
19 suffering.
20

21
22 ⁹ DuBois JM, Chibnall JT, Anderson EE, Walsh HA, Eggers M, Baldwin K, Dineen KK.
23 *Exploring unnecessary invasive procedures in the United States: a retrospective mixed-methods*
24 *analysis of cases from 2008-2016*. Patient Saf Surg. 2017 Dec 18;11:30. See link:
[10.1186/s13037-017-0144-y](https://doi.org/10.1186/s13037-017-0144-y).

1 4.7 At no time was any patient adequately informed of the risks associated
2 with surgery by the Doctors, including without limitation that no patient was
3 informed that a surgery by the Doctors involved the high risk of having a medically
4 unnecessary procedure performed for which the motive was financial gain and not
5 proper medical treatment.
6

7 **A. COMMON GENERAL FACTS¹⁰**

8 4.8 Between July 1, 2013, and November 13, 2018, Providence employed
9 Dr. Dreyer as a neurosurgeon at SMMC in Walla Walla.

10 4.9 Providence employed Dr. Elskens between November 2015 and May
11 2017 as a neurosurgeon at SMMC in Walla Walla.

12 4.10 Providence encouraged Dr. Dreyer and Dr. Elskens to perform a high
13 volume of surgical procedures of greater complexity to increase Providence profits.

14 4.11 Providence encouraged Dr. Dreyer and Dr. Elskens to conduct spine
15 surgeries at high-volume rates by applying a productivity bonus metric scheme that
16 provided the surgeons financial incentive to perform a high volume of surgical
17 procedures of greater complexity.
18

19 4.12 Upon information and belief, Dr. Dreyer and Dr. Elskens did conduct
20 complex spine surgeries at high-volume rates with intent and purpose of collecting
21

22
23 ¹⁰ Plaintiffs have reserved the right to expand the list of surgeons involved in this scheme. *See*
24 Fn. 1.

1 productivity incentive money.

2 4.13 Defendants' actions resulted in the performance of medical treatments
3 that did not meet criteria for health care insurance reimbursement, that were
4 medically unnecessary, or that were otherwise improper, for which improper
5 submissions for payment to health insurance entities occurred, and were paid,
6 including to *e.g.*, Medicare and Medicaid, all for Defendants' financial benefit.
7

8 4.14 At all relevant times, Defendants concealed and otherwise failed to
9 disclose to Plaintiffs their negligent and/or illicit activity with regard to the
10 unnecessary and/or otherwise improper medical treatments of Dr. Dreyer and Dr.
11 Elskens including Defendants' failure to report the neurosurgeons to proper
12 authorities as legally required. [REDACTED]
13 [REDACTED]
14 [REDACTED]
15 [REDACTED]

16 [REDACTED] Defendants have agreed to having concerns about the surgeries of Dr.
17 Dreyer and Elskens, as confirmed in Providence's Settlement Agreement
18 admissions, but failed to disclose any of these concerns to any patients individually
19 or generally. At all relevant times, Defendants had a duty to disclose material
20 information to Plaintiffs as a result of their fiduciary duties to Plaintiffs. *Youngs*
21 *PeaceHealth*, 179 Wn.2d 645, 659-60 (2014) (citing *Lockett v. Goodill*, 71 Wn. 2d
22 654, 656 (1967)). *Accord*, *United States v. Solakyan*, 119 F.4th 575, 585 (9th Cir.
23

1 2024) (physician-patient relationship is fiduciary for federal fraud offense purposes;
2 “Few relationships rely on a greater degree of trust and confidence than the one
3 between a patient and his or her physician.”).

4 4.15 At all relevant times, the first possible notice that any Plaintiff, named
5 and unnamed, received regarding Defendants’ misconduct was April 12, 2022 – the
6 day the DOJ announced its settlement of the sealed *qui tam* proceedings with
7 Providence for restitution for false health care payments, and the agreed-upon upon
8 facts elicited thereto. This notice, however, was followed by, *inter alia*, Providence’s
9 misleading “message” to its patients in the Walla Walla Union Bulletin on June 5,
10 2022, falsely representing that only the Doctors engaged in misconduct, followed by
11 Providence’s steadfast denials of any misconduct by it.
12

13 4.16 Throughout the employment of the Doctors, Providence had a
14 nondelegable duty (and, we allege, a heightened duty because the wRVU bonus
15 payment structure inherently creates a financial incentive for medical providers and
16 institutions to place profits over patient safety) to ensure that the Doctors performed
17 surgeries that were not medically unnecessary, overly complex, or otherwise
18 improper, or engaged in such a scheme. Providence failed in its duty to ensure the
19 oversight and supervision required to ensure the Doctors did not perform medically
20 unnecessary or otherwise improper surgeries and that they did not place patients’
21 safety at risk.
22
23
24

1 4.17 In fact, the opposite was true. Significant and detailed direct and
2 circumstantial evidence will show that Providence encouraged and/or did not stop
3 the Doctors in their earning of wRVUs and in their improper surgeries, despite the
4 red flags that should have been raised due to the concerns discussed throughout this
5 complaint, beginning in 2013 and continuing throughout the Doctors' employment,
6 especially given high earnings. *See Bookwalter, supra*.

8 4.18 As to chronological history: Dr. Dreyer was hired by Providence
9 (SMMC) on June 20, 2013. On July 1, 2013, Dr. Dreyer signed the required
10 compliance acknowledgment for treatment, care, and billing under
11 Medicare/Medicaid.

12 4.19 On July 15, 2013, Dr. Dreyer was given provisional privileges to
13 perform surgeries at SMMC. Provisional privileges are typically granted to allow a
14 surgeon to perform certain procedures under the supervision of a proctor until such
15 time that the surgeon demonstrates a certain level of competency and is deemed
16 capable of performing such procedures safely without supervision. As is standard
17 protocol, Dr. Dreyer was a salaried employee at the time of hiring.

18 4.20 Direct and circumstantial evidence will show that in 2013, Providence
19 allowed Dr. Dreyer to become an RVU earner rather than just a salaried employee,
20 even though his provisional employment status did not terminate until September
21 15, 2014.

1 4.21 In this RVU pay structure, as acknowledged by Providence in the
2 Settlement at Recital C (*see* Exhibit 2), the “RVU” system is a compensation system
3 based on a personal productivity metric known as Work Relative Value Units
4 (wRVUs), which were calculated based on a value assigned under the Medicaid and
5 Medicare Physician Fee Schedule to the services personally furnished by the
6 individual neurosurgeon. *Id.* Work Relative Value Units (wRVU) were values
7 assigned to coded medical services under the Medicaid and Medicare Physician Fee
8 Schedule for personal services provided by individual surgeons.

10 4.22 Two other categories of RVUs were similarly assigned to the coded
11 medical services, one for practice expenses such as medical equipment and realty
12 expenses (peRVUs), and the other for malpractice insurance costs (mRVUs). These
13 other RVU types were cumulative, *i.e.*, surgical procedures that generated wRVUs
14 would generally create additional reimbursement for Providence in the form of
15 additional claims and payments for peRVUs and mRVUs.

17 4.23 The more complex the medical treatment, the higher the associated
18 wRVU coding created for filing reimbursement claims with health insurers.
19 Similarly, the more frequently certain medical equipment was used, the higher the
20 RVU totals generated per patient billing. Providence created its specified RVU
21 system.

23 4.24 Dr. Dreyer (and later, Dr. Elskens) were paid compensation for each
24

1 wRVU that they generated, with no cap on the wRVU-based compensation that
2 could be earned. Recital C. Per Dr. Fewel, Providence's RVU system was known to
3 be "high reimbursement" of over \$80 per unit. Exhibit 5, p. 9. Direct and
4 circumstantial evidence will show that Providence's wRVU system included layers
5 of bonus payment, all uncapped, once certain thresholds were met.
6

7 4.25 All of this means that the greater the number of procedures of higher
8 complexity that Dr. Dreyer and Dr. Elskens performed, the greater the compensation
9 they would receive.

10 4.26 During his employment at Providence, Dr. Dreyer also entered into a
11 consulting agreement with the largest manufacturer of medical equipment,
12 Medtronic, to promote the use of its surgical equipment and, upon information and
13 belief, used this equipment to increase his RVU totals, to his financial benefit and
14 that of Providence.
15

16 4.27 During this time period, Dr. Dreyer, Dr. Yam, and anesthesiologist Dr.
17 Robert Rice discussed what the "record" was at SMMC for the amount of money a
18 neurosurgeon had been paid under the wRVU productivity bonus structure.
19

20 4.28 Upon information and belief, Providence and Dr. Dreyer submitted
21 bills for reimbursement beginning in 2013 (a complex process outlined in section
22 IV(C)) for surgeries performed by Dr. Dreyer that were falsely designated as
23 medically necessary or otherwise proper.
24

1 4.29 Direct and circumstantial evidence will show that Dr. Dreyer was well
2 aware of his high earnings in relation to RVU production and that he intended to
3 continue unabated, with Providence's encouragement and accord. For example (and
4 this is just one example), in August 2014, Dr. Dreyer boasted to his friend Dr. Lee
5 Sandquist that he was on target to make \$2.5 million by year's end under the wRVU
6 pay scheme.

8 4.30 On September 15, 2014, Dr. Dreyer was awarded full privileges,
9 transitioning his status from provisional to an active medical staff member by
10 Providence/SMMC.

11 4.31 Direct and circumstantial evidence will also show that, in 2014, staff at
12 SMMC was expressing concerns about Dr. Dreyer's surgery choices and actions,
13 and as it related to patient safety and hospital protocol, but that, upon information
14 and belief, no action was taken by Providence.

16 4.32 Upon information and belief, Providence and Dr. Dreyer submitted
17 bills for reimbursement during 2014 (a complex process outlined in section IV(B))
18 for surgeries performed by Dr. Dreyer that were falsely designated as medically
19 necessary or otherwise proper.

21 4.33 2015 was Dr. Dreyer's second full year with SMMC.

22 4.34 In April 2018, SMMC allegedly put the neurosurgeons on notice that
23 the focus should be on value versus volume of care. This was either ignored by Dr.

1 Dreyer, or went unenforced by SMMC, as Dr. Dreyer continued to process patients
2 through the OR at a high-volume rate.

3 4.35 Significant, detailed direct and circumstantial evidence will also show
4 that, in 2015, staff at SMMC was continuing to express concerns about Dr. Dreyer's
5 surgery choices and actions, including as it related to RVU billing and as it related
6 to patient safety concerns and hospital protocol, and that Dr. Dreyer was exceeding
7 his 2014 financial earnings while actually complaining about not being paid the full
8 wRVU compensation he was due. Upon information and belief, no action was taken
9 by Providence directly with regard to Dr. Dreyer.
10

11 4.36 Upon information and belief, Providence and Dr. Dreyer submitted
12 bills for reimbursement during 2015 (a complex process outlined in section IV(B))
13 for surgeries performed by Dr. Dreyer that were falsely designated as medically
14 necessary or otherwise proper.
15

16 4.37 In September 2015, Dr. Elskens signed a letter of intent for employment
17 with SMMC. Dr. Elskens was well-known to Dr. Dreyer as he was on staff with
18 Michigan State University when Dr. Dreyer was in his neurosurgery residency
19 program at MSU.
20

21 4.38 Just before Christmas, 2015, Dr. Sandquist, who was seeking
22 employment in Richmond, WA, advised Dr. Dreyer that fellow Providence
23 Neurosurgeon, Dr. Matthew Fewel, had expressed concerns about Dr. Dreyer's
24

1 surgical practices at SMMC.

2 4.39 As to Dr. Dreyer, 2016 started the same as 2015 ended – with
3 complaints about insurance billing and patient care concerns which continued
4 unchecked.

5
6 4.40 In a discussion with Dr. Yam, Dr. Dreyer mocked Dr. Fewel for opting
7 out of the wRVU production pay scheme on morality grounds.

8 4.41 Dr. Fewel did not believe spine surgeons should be paid based upon
9 productivity – he felt it raised ethics concerns and encouraged surgeons to perform
10 unnecessary surgeries to increase hospital profits and thereby increase their own
11 salary.

12
13 4.42 Dr. Elskens started with SMMC on or about February 15, 2016.

14 4.43 Dr. Dreyer's patient counts continued to be high – as did his
15 complication rate and rising number of bad or questionable post-surgery outcomes.

16 4.44 Through the summer and fall of 2016, Dr. Dreyer continued with his
17 volume practice of performing unnecessary and overly complex surgeries on
18 patients. At one point he asked to schedule surgeries on Saturdays to increase his
19 volume even further.

20
21 4.45 Significant detailed direct and circumstantial evidence will also show
22 that, in 2016, staff at SMMC continued to express concerns about Dr. Dreyer's
23 management of surgery choices and actions, including as it related to RVU billing

1 and as it related to patient safety concerns and hospital protocol, and that Dr. Dreyer
2 was exceeding his 2014 financial earnings while actually complaining about not
3 being paid his full wRVUs, but that, upon information and belief, no action was
4 taken by Providence directly with regard to Dr. Dreyer. Upon information and belief,
5 direct and circumstantial evidence will also show that staff at SMMC was expressing
6 concerns about Dr. Elskens' management of surgery choices and actions as it related
7 to patient safety concerns and hospital protocol as well as to whether surgeries were
8 medically necessary or otherwise proper.
9

10 4.46 According to publicly-filed IRS documents, Dr. Dreyer's 2016 earnings
11 reached nearly \$2.9 million, similar to his IRS-listed 2015 income of just over \$3
12 million. *See* ECF 119-1.
13

14 4.47 Upon information and belief, Providence, Dr. Dreyer, and Dr. Elskens
15 submitted bills for reimbursement during 2016 (a complex process outlined in
16 section IV(B)) for surgeries performed by Dr. Dreyer and Dr. Elskens that were
17 falsely certified as medically necessary or otherwise proper.
18

19 4.48 By the close of 2016, Dr. Dreyer's pattern of performing an excessive
20 number of surgeries on patients who did not need the surgery, or the extent of the
21 surgery, had become commonplace. Providence was clearly aware of the issue and
22 concerns raised about Dr. Dreyer but did not take proper action. Dr. Dreyer's high-
23 volume practice was increasing the profitability for SMMC as much as, or more
24

1 than, it was increasing Dr. Dreyer's income.

2 4.49 In January 2017, billing code changes reduced the value of certain
3 procedures for the spine surgeons. Dr. Dreyer complained that cage placement was
4 now only worth 4.7 RVUs. At the end of January 2017, Dr. Dreyer complained about
5 an insurance company asking for a medical necessity letter before it would authorize
6 surgery for a Dreyer patient.
7

8 4.50 While all of this is going on, Dr. Elskens continued to have problems
9 in the OR. His rate of surgical errors was up, and Dr. Yam was increasingly
10 concerned.
11

12 4.51 In February 2017, Dr. Yam and Dr. Dreyer were provided with the
13 SMMC 2016 profit and loss statement to discuss with the finance committee,
14 reflecting the high importance of their production to the financial health of SMMC.

15 4.52 Dr. Elskens resigned from Providence on or about May 8, 2017.

16 4.53 Dr. Elskens' resignation was triggered, at least in part, by pressure from
17 Providence to resign or be terminated as a result of performance concerns and
18 concerns he was performing unnecessary surgeries in order to capitalize on the
19 Providence productivity bonus metric scheme. Subsequently, Providence would
20 claim in its June 5, 2022 Walla Walla Union Bulletin advertisement, that it
21 conducted a "through internal investigation" of the two doctors in 2017 "resulting in
22 the surgeons leaving the organization in 2017 and 2018."
23
24

1 4.54 Direct and circumstantial evidence will show events occurring around
2 and during this time regarding Providence's reporting, or lack thereof, of Dr. Elskens
3 to the NPDB that are consistent with the allegations made previously in Paragraph
4 1.22, *supra*.

5
6 4.55 Upon Dr. Elskens' resignation, the two remaining neurosurgeons at
7 SMMC were Dr. Yam and Dr. Dreyer.

8 4.56 Significant, detailed direct and circumstantial evidence will also show
9 that, in 2017, staff at SMMC continued to express concerns about Dr. Dreyer's
10 management of surgery choices and actions, including as it related to RVU billing
11 and as it related to patient safety concerns and hospital protocol, but that, upon
12 information and belief, no action was taken by Providence directly with regard to
13 only Dr. Dreyer. Upon information and belief, direct and circumstantial evidence
14 will also show that, in 2017, staff at SMMC had also expressed concerns about Dr.
15 Elskens' management of surgery choices and actions as it related to patient safety
16 concerns and hospital protocol as well as to whether surgeries were medically
17 necessary or otherwise proper, which ultimately did lead (as discussed above) to Dr.
18 Elskens' resignation, but, we allege, only due to pressure felt by Providence to take
19 some action.
20
21

22 4.57 An example: on June 7, 2017, Dr. Christopher Hall received an email
23 from Dr. Marc Haugen, raising the concern to Dr. Hall that he had received a call
24

1 from Dr. Dreyer's office noting that Dr. Dreyer had prescribed narcotics to a patient
2 at a level over the amount allowed by state law, and that Dr. Dreyer subsequently
3 refused to continue prescribing the narcotic but instead "dumped" the patient back
4 to the outpatient providers. Dr. Hall responded suggesting a possible need for
5 education about narcotic prescribing. But there is no documented evidence that Dr.
6 Hall responded to or followed up on the unprofessional and unsafe practices of 1)
7 overprescribing and 2) leaving the patient with no plan and no personal follow up.
8

9 4.58 Upon information and belief, Providence, Dr. Dreyer, and Dr. Elskens
10 submitted bills for reimbursement during 2017 (a complex process outlined in
11 section IV(B)) for surgeries performed by Dr. Dreyer and Dr. Elskens that were
12 falsely designated as medically necessary or otherwise proper.
13

14 4.59 In July 2017, communication from Providence / SMMC Chief Medical
15 Officer Christopher Hall indicated that the neurosurgery group at SMMC (Drs.
16 Dreyer and Yam) was under a program review. Dr. Hall mentioned Dr. Burak M.
17 Ozgur, MD. Additional reviewers of Dr. Dreyer's patient files included Dr. Nicholas
18 Theodore, MD, and Dr. Estrada Bernard, MD.
19

20 4.60 Upon information and belief, and in response to the program being
21 under scrutiny, Dr. Yam began paying closer attention to questionable conduct in
22 the neurosurgery department and threatened providers with MQAC (state quality-
23 care) reporting on what he perceived to be ethics and substandard care issues.
24

1 4.61 As explained in his *qui tam* lawsuit, filed January 20, 2020, Dr. Yam
2 had reported both Dr. Elskens and Dr. Dreyer in 2017 without adequate response
3 from Providence. Exhibit 1, p. 4. With regard to Dr. Dreyer, Dr. Yam scrutinized his
4 medical records after Dr. Elskens resigned. *Id.*, p. 4-5. He found that Dr. Dreyer was
5 fabricating patient diagnoses and treatments to justify complex operations and to
6 increase the billing for himself and Providence. *Id.* Dr. Yam reported his concerns
7 in 2017 and was assured Providence would take proper action, but that did not occur.
8 *Id.*, p. 6. Dr. Yam believed that Providence took no proper action so it could continue
9 to obtain the windfall of profit from Dr. Dreyer's medically unnecessary and
10 otherwise improper surgeries. *Id.* According to Dr. Yam, no action was taken until
11 April 2018, when he used the words "fraud," "malpractice," and "harm" in emails
12 to key Providence administrators in Walla Walla, Spokane, and Renton,
13 Washington. *Id.*

16 4.62 As explained in a DOJ email with the subject line of "patient safety" to
17 MultiCare's outside counsel in February 2020, a whistleblower (now known to be
18 Dr. Yam) was reporting "credible evidence of unnecessary surgeries, [r]esulting
19 patient harm, and evidence of Dr. Dreyer creating false and fraudulent medical
20 records (primarily his op notes apparently mischaracterizing what had occurred
21 during his surgeries as well as false and fraudulent diagnosis supposedly justifying
22 the unnecessary surgeries in the first place"). Exhibit 6 at p. 2.

1 4.63 Attached to this email was a 35-page summary which, upon information
2 and belief, summarized Dr. Yam's concern about Dreyer's surgeries. *See* Exhibit 6
3 (pp. 5-40).

4 4.64 This patient summary, labelled a "Misconduct Summary," included
5 reference to Dr. Yam conducting a three-month evaluation of all Dr. Dreyer's
6 surgical files between November 6, 2017 and February 6, 2018.

7 4.65 Per this attachment to these DOJ emails, Dr. Yam's report about this
8 three-month review of Dr. Dreyer surgical files can be summarized as follows:
9

10 4.65.1 Dr. Dreyer was exaggerating and overstating patients' medical
11 conditions, as well as charting patient conditions that the patient did not have;
12

13 4.65.2 Dr. Dreyer was performing surgeries that were not medically
14 necessary;

15 4.65.3 Dr. Dreyer was over-operating – that is, performing a surgery in
16 greater complexity and charting patient conditions and symptoms that the
17 patient did not have;

18 4.65.4 Dr. Dreyer caused "harm" to patients by performing overly
19 complex or unnecessary surgeries, which harm could increase later;
20

21 4.65.5 Dr. Dreyer created potential for "harm" because of, e.g., "re-
22 operations that will likely occur" to the same group of patients in the future;

23 4.65.6 The "harm" caused by Dr. Dreyer included "suicide attempts,
24

1 death, permanent nerve injury, increased cancer risk, and severe chronic
2 irreversible pain for a large number of Dr. Dreyer's patients;”

3 4.65.7 Dr. Dreyer performed surgeries to maximize billing;

4 4.65.8 Dr. Dreyer performed surgeries on certain patients who were not
5 proper candidates for surgery, given their medical histories; and
6

7 4.65.9 Complications caused by Dr. Dreyer surgeries resulted in
8 increased hospital stays and extended care, all of which financially benefitted
9 Providence.

10 4.66 Per this report from Dr. Yam, Providence did not conduct reviews of
11 “most” of these cases cited by Dr. Yam and “even the death result that I told
12 Providence about was attributed falsely to an ‘enlarged heart,’ not to the massive
13 operation performed on him unnecessarily.” *Id.*, p. 40.
14

15 4.67 Per Dr. Yam, that three-month review of Dr. Dreyer's surgical files
16 resulted in a finding that “greater than 80% of his operations over that time contain
17 major issues.” *Id.*, p. 34.
18

19 4.68 Dr. Fewel made a similar report in March 2019 to the DOH. *See Exhibit*
20 5.

21 4.69 Dr. Fewel, who reviewed many of Dr. Dreyer's surgical files post-
22 surgery (usually to give second opinions) stated that, over time, “themes” began to
23 emerge in his review of these files, including that “imaging studies were reported as
24

1 showing dynamic instability when in fact they do not” with the motive for such a
2 false report being “to secure insurance approval and justification for fusion surgery
3 and to generate large numbers of RVUs.” *Id.* at 8. He also expressed concern about
4 billing for procedures not performed and for an excessive use of templates. *Id.* He
5 stated, “[T]hese cases go beyond being surgically aggressive or mere coincidences.
6 Many of these cases represent fraud, deception, and a blatant disregard for the truth.
7 The patients are the ones to suffer as a result.” *Id.* at 9. He outlined the “11 most
8 egregious cases” for the DOH and indicated his belief that “there are likely hundreds
9 of similar cases.” *Id.* at 7. Two of the cases were Eben Nesje and Kirk Summers,
10 who are both plaintiff representatives here.
11

12
13 4.70 After Dr. Yam sent his April 2018 email (later referenced in his 2020
14 *qui tam* action), Dr. Dreyer became concerned about the lack of transparency on the
15 review of his cases. He reached out to Providence counsel, Betsy Vo, and
16 complained that the process seemed adversarial and that he was unaware that
17 attorneys were involved in the review.
18

19 4.71 Also during this period, Dr. Dreyer continued to push for his
20 Providence RVU bonus pay.

21 4.72 Also during this period, problems with Dr. Dreyer’s charting and
22 patient care continued to arise.

23 4.73 On May 22, 2018, Providence placed Dr. Dreyer on administrative
24

1 leave.

2 4.74 Dr. Dreyer reached out to former colleague Dr. Perry Camp and
3 informed him Providence had forced him to take a “safety pause.”

4 4.75 Providence has stipulated in the Settlement Agreement with the DOJ
5 that this “safety pause” preventing Dreyer from performing surgeries at Providence
6 was termed by Providence as placing him on “administrative leave.” Exhibit 2,
7 Recital F.

8 4.76 This “safety pause” should have itself triggered a report to the DOH
9 and the NPDB. But Providence did not report the forced leave for patient safety
10 concerns to the DOH and NPDB.
11

12 4.77 Dr. Dreyer remained on administrative leave through the month of June
13 as the investigation and review of files continued to ramp up. Providence was
14 prioritizing its own defense over the provision of adequate notice rather than to those
15 who needed it to protect patient health.
16

17 4.78 Also during this period, Dr. Dreyer communicated with Dr. Elskens
18 who advised Dr. Dreyer that both he and Dr. Yam were “fucked” and that Dr. Dreyer
19 needed to get out of the situation immediately.
20

21 4.79 By September 1, 2018, Dr. Dreyer was still on the Providence-directed
22 administrative safety pause. He allegedly hadn’t performed a surgery or seen a
23 patient in his capacity as an employee of Providence since May 22, 2018.
24

1 4.80 Moving into the late fall 2018, Dr. Dreyer began seeking *locum tenons*
2 work (*i.e.*, temporary replacement work) with other hospitals or neurosurgery
3 groups. One such hospital or group was located in Michigan and was managed by a
4 friend of Dreyer's from his residency program. Dr. Dreyer also engaged a staffing
5 representative to assist him in locating locums work in Washington. Providence
6 took no action to ensure the facilities for whom Dr. Dreyer was performing *locums*
7 work became aware of its ongoing administrative leave and patient safety and ethics
8 concerns with Dreyer's patient care.

9
10 4.81 Direct and circumstantial evidence will show events occurring around
11 and during this time in the fall of 2018 regarding Providence's reporting, or lack
12 thereof, of Dr. Dreyer to authorities that are consistent with the allegations made
13 previously in Paragraph 1.22, *supra*.

14
15 4.82 On November 18, 2018, Dr. Dreyer submitted his resignation from his
16 employment with Providence to CEO Blackburn, indicating it was effective
17 immediately. Providence accepted the resignation but did not then or thereafter
18 report Dr. Dreyer to the DOH or NPDB as required.

19
20 4.83 At this point, despite all that had occurred, Providence still had taken
21 no formal action on Dr. Dreyer's credentials/privileges. Nor had they communicated
22 concerns about Dr. Dreyer to the public to assure transparency in respect to public
23 safety. Nor had they contacted patients to notify them of the fraud that had been
24

1 perpetrated upon them, or concerns about the surgery that they had undergone, and
2 complications, nor ongoing or future issues related thereto.

3 4.84 In January 2019, Dr. Dreyer reached out to Providence/SMMC
4 administration personnel and advised that he was looking for employment and
5 wanted to know what his current standing was with Providence. He was told his
6 medical staff privileges were in good standing, that SMMC was not going to note a
7 gap or anything negative on his affiliation reports, and any request for information
8 on Dr. Dreyer would be deferred to the online verification system. In other words,
9 SMMC and Providence intended to continue to perpetuate the fraud – not only on
10 the public, but also on any prospective employer of Dr. Dreyer. Providence benefited
11 from this course of action by continuing to conceal its complicity in the pattern of
12 false claims.
13
14

15 4.85 This agreement between Providence and Dreyer to conceal Dreyer's
16 records at Providence to prospective employers continued and reaffirmed their
17 ongoing agreement to conceal Dreyer's misconduct at Providence.
18

19 4.86 On February 25, 2019, Dr. Yam submitted his resignation with
20 Providence SMMC, indicating his intent to take a position with Oregon Health
21 Sciences University.

22 4.87 On March 13, 2019, a termination notice was finally entered by
23 Providence for Dr. Dreyer.
24

1 4.88 On April 23, 2019, Providence SMMC administrative personnel
2 advised and reassured Dr. Dreyer that nothing negative would be reported to
3 inquiring prospective employers.

4 4.89 In texts sent in May 2019 between Dr. Dreyer and his friend Dr.
5 Sandquist, Dreyer coached Dr. Sandquist that, when filling out Dreyer's MultiCare
6 referral recommendation form, Dr. Sandquist should not report Providence's
7 suspension of him and that Dreyer's lawyers counseled him that that was
8 "Providence's position" as part of Dreyer's "severance deal" with Providence. Dr.
9 Sandquist responded, "perfect, will do" and subsequently failed to report to
10 MultiCare, in response to its referral form inquiry, knowledge of any disciplinary
11 action taken by Providence against Dreyer. Dr. Sandquist had been in residency
12 with Dreyer in Michigan and worked there with both Dr. Elskens and Dr. Dreyer,
13 before he moved to Washington State to perform neurosurgeries at Confluence
14 Health. After Dr. Dreyer's hiring by MultiCare, Dr. Dreyer recommended Dr.
15 Sandquist for employment at MultiCare, where Dr. Sandquist was then hired.

16 4.90 According to MultiCare, to consider hiring Dreyer, it formed a hiring
17 committee led by three senior MultiCare managers: Laureen Driscoll, MultiCare's
18 President of Deaconess Hospital; Mark Donaldson, MultiCare's Regional
19 Administrator of its Neuroscience Institute; and John Demakas, MultiCare's
20 Department Head of Neurological Surgery.

1 4.91 These high-level managers were responsible for MultiCare's decision
2 to hire Dr. Dreyer. If Providence had notified any of them directly of Dr. Dreyer's
3 known misconduct at Providence during his recruitment process, they would have
4 had the authority not to hire Dr. Dreyer and to prevent exposing MultiCare's patients
5 to the dangers and risks of continued misconduct by Dr. Dreyer, notwithstanding the
6 money that would generate for MultiCare.
7

8 4.92 During his recruitment by MultiCare, Dr. Dreyer sought and obtained
9 assurances from Providence personnel by confirming they would not disclose his
10 suspension, or resulting months of no surgical work, to prospective employers. To
11 Plaintiffs' knowledge, those Providence personnel complied with Dr. Dreyer's
12 request to conceal information from prospective employers, including MultiCare.
13

14 4.93 When the DOJ and the Washington Attorney General later sued
15 MultiCare for Dr. Dreyer's surgeries at MultiCare in January 2024, *see* ¶ 1.2, *supra*,
16 MultiCare defended in part by claiming that it had not been given notice by either
17 Providence or Dr. Dreyer about the concerns raised at Providence regarding Dr.
18 Dreyer's surgeries or patients at Providence prior to MultiCare's decision to hire Dr.
19 Dreyer in 2019.
20

21 4.94 In a further concerted effort by Defendants to conceal the fact and
22 results of the Providence investigation during Dr. Dreyer's months of suspension at
23 Providence, upon information and belief, Providence and Dr. Dreyer referred Dr.
24

1 Dreyer's patients to a doctor at a different medical facility -- Dr. Lee Sandquist.
2 Upon information and belief, an objective of Defendants routing Dr. Dreyer's
3 patients to Dr. Sandquist during Dr. Dreyer's suspension at Providence was to retain
4 control over the associated patient RVU opportunities and the patient confidentiality
5 prerogatives associated with their care. Upon information and belief, Dr. Sandquist
6 would have been willing to participate in that plan, given his relationship to Dr.
7 Dreyer as a close personal friend (§1.23) and his later willingness to misrepresent
8 facts about Dr. Dreyer's "safety pause" when recommending Dr. Dreyer to
9 MultiCare (at the behest and instruction of Dr. Dreyer, including that Providence
10 promoted such a misrepresentation, *see* §4.89), all of which ultimately resulted in
11 his own employment at MultiCare due to Dr. Dreyer's recommendation of him to
12 MultiCare (*id*).
13
14

15 4.95 Providence intentionally or negligently: (i) failed to follow NPDB and
16 DOH regulations governing reporting requirements for physicians on administrative
17 leave with restricted patient access triggered by patient safety or ethics concerns;
18 and (ii) failed to advise prospective employers that Dr. Dreyer was inactive on
19 administrative leave in a forced safety pause from May 22, 2018, through his
20 resignation on November 13, 2018, and forward through his termination on March
21 13, 2019. These concealment efforts were intended to keep Dr. Dreyer's known
22 dangerous propensities from entities who had a right to know and the professional
23
24

1 ability to understand the significance of a “safety pause” to patient safety. These
2 efforts facilitated Dr. Dreyer’s ability to obtain employment at MultiCare in May
3 2019, where his unethical and dangerous propensities continued.

4
5 4.96 On January 10, 2020, Dr. David Yam, M.D., as Relator, and on behalf
6 of the United States and Washington State, filed a complaint (the 2020 *qui tam*
7 complaint) in the Eastern District of Washington, alleging violations of the False
8 Claims Act against PROVIDENCE. See *United States ex rel. Yam v. Providence*
9 *Health & Services Washington*, Case No. 4:20-cv-05004. (See Exhibit 1).

10
11 4.97 The allegations in the 2020 *qui tam* complaint were based upon the
12 fraudulent billing for medically unnecessary and otherwise improper care provided
13 by Providence via its agents / employees Dr. Dreyer and Dr. Elskens.

14
15 4.98 As statutorily required, this 2020 *qui tam* complaint was filed under
16 seal.

17
18 4.99 By notice dated January 13, 2022, the United States Justice Department
19 intervened in the 2020 *qui tam* complaint. This also was done under seal and not
20 made public, per statute. The sealed nature of these court proceedings, coupled with
21 the requirement that *qui tam* lawsuits be brought using non-public information, 31
22 U.S.C. § 3730(e)(4)(A), prolonged the effect of Defendants’ concealment campaign
23 in preventing discovery by patients.

24 4.100 As discussed previously, see ¶¶ 1.12-1.20, the 2020 *qui tam* complaint

1 alleged, and Providence later admitted salient facts showing Providence was billing
2 the federal and state governments for these neurosurgeons' medical services that did
3 not meet criteria for reimbursement, were medically unnecessary, and/or were
4 otherwise improper.

5
6 4.101 As detailed previously, *see* ¶¶ 1.12-1.20, on or about March 17, 2022,
7 Providence entered into a Settlement Agreement (SA) with the United States
8 Government and the State of Washington.¹¹ The agreement calls for Providence to
9 pay a total of \$22,690,458 (\$10,459,388 of which is specified as restitution) along
10 with remedies and protocols to ensure, *inter alia*, patients' future safety. The SA
11 does not require any payment from Drs. Dreyer or Elskens.

12
13 4.102 As noted previously (¶¶ 1.15-1.19 & 4.62-4.69), Drs. Dreyer and
14 Elskens were accused of patterns of activity that were supported by reports from Dr.
15 Yam and from Dr. Fewel. The eight specific patterns of activity (with Dr. Dreyer
16 accused of all eight and Dr. Elskens accused of the last four) are at Recital D of the
17 SA.¹² In total, Recital D alleges the Doctors engaged in:

18
19
20
21 ¹¹ See Settlement Agreement Attached as Exhibit 2.

22 ¹² In its January 26, 2024 *qui tam* complaint against MultiCare, the DOJ further alleged that
23 Providence's admissions in 2022 included the admission that there were claims of Dr. Dreyer's
24 surgeries causing permanent injury and death and of Dr. Dreyer "knowingly and inappropriately
complet[ing] billing sheets and other documentation that caused Medicare and other health
insurance programs to be falsely and fraudulently billed for medically unnecessary and
inappropriate neurosurgical services." *See also* ¶ 1.16, *supra* (with citations therein).

- (a) Falsifying, exaggerating, and/or inaccurately diagnosing patients' true medical conditions in order to obtain reimbursement for surgical procedures;
- (b) Performing surgical procedures that did not meet the medical necessity guidelines and requirements set forth by Medicare and other governmental health insurance programs;
- (c) "Over-operating" – i.e., performing a surgery of greater complexity and scope than was indicated and medically appropriate;
- (d) Jeopardizing patient safety by attempting to perform an excessive number of overly complex surgeries;
- (e) Endangering patients' safety;
- (f) Creating an excessive level of complications, negative outcomes, and necessary additional operations as a result of their surgeries;
- (g) Performing surgical procedures on certain candidates who were not appropriate candidates for surgery given their medical histories, conditions, and contraindications; and
- (h) Failing to adequately document certain procedures, diagnoses, and complications.

4.103 This pattern of concerns outlined in the 2022 Settlement, mirrors the reports made by Dr. Fewel and Dr. Yam (*see e.g.*, Exhibits 5 and 6) and thus is consistent with the typical kinds of pattern and consequent harm that "hundreds" of patients suffered (per Dr. Fewel and the DOJ), potentially impacting "over 80 percent" of Dr. Dreyer's surgical files (per Dr. Yam).

4.104 As detailed in the SA, Providence accepted payments from federal and state health care sources (*e.g.*, Medicare, Medicaid, the FEHBP, TRICARE, and VA

1 Community Care) while being aware of these allegations against these
2 neurosurgeons.

3 4.105 As detailed in the SA, as a result of this pattern and practice of
4 Providence, Dr. Dreyer was one of the highest producing neurosurgeons in the entire
5 7-state Providence system, earning between \$2.5 and \$2.9 million a year for the
6 years where he was employed (per the SA, with income over \$3 million in some
7 years, per IRS filings).

8 4.106 According to the SA, despite knowledge of these neurosurgeons'
9 misconduct, and despite placing them each on administrative leave due to concerns
10 listed above (*see e.g.*, ¶ 4.102), Providence allowed Dr. Elskens and Dr. Dreyer to
11 resign instead of terminating their employment.

12 4.107 According to the SA, despite having knowledge of these
13 neurosurgeons' misconduct, Providence reported neither neurosurgeon to legal
14 authorities (*e.g.*, NPDB or DOH). This occurred despite the legal obligation to
15 report, *see* 42 U.S.C. § 11133(a)(1) and RCW 70.41.210, and would later be the
16 basis for a finding by the DOH substantiating a violation of this reporting obligation.

17 4.108 According to the SA, despite having knowledge of these
18 neurosurgeons' misconduct, Providence took no action to refund Medicare or
19 Medicaid for surgical procedures performed by either Dr. Elskens or Dr. Dreyer for
20 which Providence had previously sought and received reimbursement.

1 4.109 Upon information and belief, Providence also:

2 4.109.1 accepted payments from private insurance health care
3 sources using similar or the same criteria for payment/non-payment of
4 surgeries (including requirements that medical treatment be necessary or be
5 otherwise proper);

6 4.109.2 did so while being or becoming aware of the allegations
7 against these neurosurgeons as outlined above and in the 2020 *qui tam*
8 complaint and the SA; and

9 4.109.3 did not refund any private insurance health care source or
10 any self-funded patients for any surgical procedures performed by either Dr.
11 Elskens or Dr. Dreyer for which Providence had previously sought and
12 received reimbursement.

13 4.110 Upon information and belief, Providence was aware or should have
14 been aware at or near the time of hiring these neurosurgeons that the neurosurgeons
15 put patients at dire risk and performed these kinds of medically unnecessary or
16 otherwise improper procedures, yet Providence presumably concealed that
17 information and any and all of its knowledge regarding this unprofessional conduct
18 until April 12, 2022, when the SA was made public.

19 4.111 Historically, repeatedly, and currently, Providence sets itself out to the
20 public in its promotional material as a caring, moral, health care provider with
21

1 integrity that puts patients' needs first (not its own financial gain). For example, it
2 has made the following public statements:

3 4.111.1 "We strive to do what's right for people, all people, but
4 especially the poor and vulnerable."

5 4.111.2 "We don't take the easiest answer, we look for the right
6 answer."

7 4.111.3 "Integrity means you are always approaching things with
8 a moral viewpoint. In our case, a moral viewpoint that is adjusted for the
9 benefit of the many, and not the few."

10 4.111.4 "At Providence we see more than patients, we see the life
11 that pulses through us all. That's why we're dedicated to a holistic approach
12 to medicine that employs not only the most advanced treatments to improve
13 outcomes, but also puts compassion and humanity at the heart of every
14 interaction."

15 4.111.5 "We use our voice to advocate for vulnerable populations
16 and needed reforms in health care. We are also pursuing innovative ways to
17 transform health care by keeping people healthy, and making our services
18 more convenient, accessible and affordable for all. In an increasingly
19 uncertain world, we are committed to high-quality, compassionate health care
20 for everyone, regardless of coverage or ability to pay. We help people and
21
22
23
24

1 communities benefit from the best health care model for the future – today.”

2 4.111.6 “As a comprehensive health care organization, we are
3 serving more people, advancing best practices, and continuing our more than
4 100-year tradition of serving the poor and vulnerable. Delivering services
5 across seven states, Providence is committed to touching millions of more
6 lives and enhancing the health of the American West to transform care for the
7 next generation and beyond.”

8 4.111.7 “We set the highest standards for ourselves and our
9 ministries. Through transformation and innovation, we strive to improve the
10 *health* and quality of life...”

11 4.112 These representations were and are designed to entice the public to rely
12 upon Providence for medical care without reservation or concern about Providence’s
13 care and protection of their best and highest health.

14 4.113 Rather than inform Plaintiffs and the public of the scheme at SMMC
15 of, *inter alia*, medically unnecessary surgeries for financial gain (described herein),
16 Providence concealed the scheme and maintained secrecy, to the extent of failing to
17 report the neurosurgeons, including those under investigation, to proper authorities,
18 and did so to maintain at all costs its squeaky-clean public persona, thus engaging in
19 deceptive and unfair acts in order to market its health care services to new patients.

20 4.114 Even today, Providence continues to engage in deceptive and unfair
21

1 acts by publicly minimizing the SMMC situation (including the \$22.7 million
2 settlement and the safety precautions it now must implement across all its facilities)
3 by falsely calling it an “isolated incident in Walla Walla” on April 12, 2022, despite
4 the extensive damage done to its patients, despite its fiduciary obligations to those
5 patients, and despite the fact that senior administrators from Walla Walla, Spokane,
6 and Renton headquarters were informed about Walla Walla as early as 2018. A true
7 and correct copy of this April 12, 2022 Statement is attached as Exhibit 3.
8

9 4.115 Since the filing of the Class Action Complaint on May 16, 2022, and as
10 discussed previously, *see* ¶¶ 1.26-1.32, Providence continued to engage in its
11 deceptive and unfair acts by publishing a full-page advertisement on June 5, 2022,
12 in the Walla Walla Union Bulletin that minimizes, misleads, and/or inaccurately
13 describes the aforementioned events and Providence’s responsibility therein,
14 including its fiduciary duties to patients. *See* Exhibit 4.
15

16 4.116 The success of Providence’s concealment campaign (*see* ¶¶ 1.22, and
17 ¶¶ 4.88-4.95) is shown by Dr. Yam’s successfully-filed sealed *qui tam* lawsuit
18 against Providence, which required Dr. Yam to provide *non-public* information to
19 the federal government about Providence’s false claims in order to succeed. *See* 31
20 U.S.C. § 3730(e)(4)(A) (suit upon publicly disclosed information subject to
21 dismissal). This is evidence that Providence’s concealment campaign worked to
22 prevent any public disclosure even to its largest and most medically sophisticated
23
24

1 payor (the federal government). When then confronted by the state and federal
2 governments about this breach of trust in the sealed *qui tam* litigation, Providence
3 denied any liability to its patients up through settlement in April 2022. Providence
4 has continued to conceal Defendants' misconduct by maintaining to this day that no
5 medically unnecessary surgery was performed by the Doctors at Providence.
6

7 4.117 In December, 2022, the Washington DOH completed an investigation
8 into Providence SMMC's violations of Washington Administrative Code (WAC)
9 Chapter 246-320 and RCW 70.41.21 regarding their failure to report Dr. Dreyer and
10 Dr. Elskens to the DOH for patient care standard of care violations and ethics
11 violations.
12

13 4.118 The allegations included that

- 14 • The hospital (SMMC) failed to implement safeguards to prevent, deter,
15 and cease medically unnecessary procedures as required under WAC 246-
16 320-131, which required SMMC to establish and review requirements,
including requirements for reporting practitioners according to RCW
70.41.210; and
- 17 • The hospital (SMMC) failed to adopt proper bylaws, rules and regulations
18 that address assessment of a credentialed practitioner's performance under
19 RCW 70.41.210 (such as practitioners like Dr. Dreyer or Dr. Elskens).

20 4.119 Based on the above, and after finding violations of RCW 70.41.210
21 mandatory reporting requirements, the DOH ordered, and Providence agreed to,
22 corrections to include:

23 4.119.1 "PSMMC will contract with independent consulting group
24

1 for a period of no less than 5 years to identify and work through processes of
2 medical staff quality control to include timely and thorough reporting.”

3 4.119.2 Education on management of provider issues and
4 appropriate reporting will be completed by Medical Staff Leadership.
5

6 4.119.3 A document summarizing definitions of unprofessional
7 conduct requiring reporting as defined by RCW 18.310.180 will be included
8 in all Medical Staff Committee Attendee Packets for a minimum of 12
9 months.

10 4.120 Ultimately, on April 20, 2023, Dr. Dreyer entered into a settlement
11 agreement with the DOJ wherein the DOJ agreed to release Dr. Dreyer for conduct
12 covered in its investigation that violated federal law in exchange for payment of
13 \$1,174,849 and agreement that he be excluded from Medicare, Medicaid, and all
14 other Federal health care programs, as defined in 42 U.S.C. § 1320a-7b(f), for nine
15 (9) years with national effect, making him ineligible for reimbursement for any
16 services provided to any patient covered by any federally funded insurance
17 program.¹³
18
19

20 4.121 The Dreyer settlement agreement specifically references allegations of
21 misconduct and substandard care by Dr. Dreyer AFTER he left Providence in April,
22

23
24 ¹³ Exhibit 7.

1 2018, and was hired by MultiCare Health System – whereafter he continued to take
2 advantage of yet another capless wRVU productivity pay metric used by MultiCare
3 and continued to perform surgeries that were medically unnecessary, or were
4 otherwise improper in order to increase his wRVU bonus; becoming the highest paid
5 employee in the entire MultiCare Health System in his first full year of practice with
6 MultiCare.
7

8 4.122 On November 16, 2023, the DOH and Dr. Dreyer entered into a
9 disposition in which Dr. Dreyer agreed to permanently surrender his license to
10 practice medicine in Washington. The stipulation was born out of factual allegations
11 of substantial misconduct dating back to Dr. Dreyer’s employment with Providence
12 and were based upon the complaint filed by Providence neurosurgeon Dr. Matthew
13 Fewel as well as a review by a Board of Osteopathic Medicine and Surgery Health
14 Systems Quality Assurance (HSQA) retained expert, Dr. Abhineet Chowdary, M.D.
15 FAANS, Diplomate American Board of Neurological Surgery.¹⁴
16

17 4.123 The patterns noted in reviews by Dr. Chowdary and Dr. Fewel (which
18 include false or exaggerated symptoms, improper use of the term instability,
19 performing invasive multi-level surgeries on a patient with minor spine
20 abnormalities, unsupported diagnoses, and the like) corresponded with the patterns
21
22

23
24 ¹⁴ Exhibit 8.

1 of ethical misconduct and standard of care violations reported to the SMMC CEO
2 and CMO by Dr. Yam in 2017, and again in April, 2018, and ultimately to the DOJ.
3 (*See also* ¶¶ 1.15-1.19, 4.62-4.69, & 4.102-4.103, *supra*) (*see also* Exhibits 1 and 6).
4

5 4.124 The allegations set out of substandard patient care include two of the
6 named plaintiff representatives herein, Mr. Eben Nesje (Patient C) and Mr. Kirk
7 Summers (Patient E).

8 4.125 Providence SMMC's failure to implement policies and practices set
9 forth above – or in the alternative to actively enforce those policies and practices –
10 has resulted in Defendants causing emotional damage as well as permanent, life-
11 changing injuries and damages to Defendants' surgical patients, for financial gain.
12

13 4.126 As noted herein, by and because of Providence's profit over patient
14 safety practices, patients of Providence and MultiCare suffered permanent,
15 debilitating harm as a result of neurosurgeons Dr. Elskens and Dr. Dreyer's
16 negligent, unlawful, unethical, and fraudulent treatment practices; the value of which
17 will be set forth fully at trial.
18

19 4.127 By and because of Defendants' fraudulent, unlawful, unethical, and
20 negligent practices, Providence's continued profit over patient safety practice
21 resulted in actual financial loss to the named Plaintiffs and associated class of
22 Plaintiffs as set forth herein in dollar amounts that will be set forth fully at trial.

23 4.128 By and because of Defendants' fraudulent, unlawful, unethical, and
24

1 negligent practices, the plaintiffs are entitled to disgorgement of the unlawful
2 proceeds obtained by the Defendants.

3 **B. COMMON FACTS TO IMPROPER BILLING¹⁵**

4 4.129 Providence was well aware, or should have been well aware, of the false
5 and fraudulent billing taking place with regard to the Doctors' surgeries due to its
6 billing system.

7 4.130 In a hospital system where the hospital employs a surgeon (in this case,
8 the Doctors in question), the hospital will bill the payor for the surgeons' services
9 (typically a private or government insurance company) and then pay the surgeons
10 on some sort of system.

11 4.131 Upon information and belief, the billings at SMMC would have been
12 generated via a combination of the Doctors reporting their services provided and the
13 billing department generating codes.

14 4.132 This is a highly complex process without a specific checks-and-
15 balances system in the day-to-day billing process. Individuals in the billing
16 department who are generating the bill may not themselves have sufficient
17 knowledge to challenge or refute the billing claimed. To ensure that appropriate bills
18 and codes are used, a hospital such as SMMC provides oversight and audits.

19
20
21
22
23 ¹⁵ This Section derives primarily from the Declaration of hospital expert Dr. Susan Abookire, see
24 ECF 119-4.

1 4.133 For example, physicians have complexity ratings, known as “intensity”
2 criteria, that they use within their charting both in the patient’s medical records and
3 in the back-end billing records that are sent to billing department coders for bill
4 creation. Sometimes there is a discrepancy between what a physician (in this case, a
5 Doctor) writes in chart notes and the “intensity,” or the complexity assigned to what
6 he or she sends to the coder. This potential anomaly between services provided
7 compared with the higher complexity billed requires internal audits of the
8 complexity billed versus services rendered to make sure the medical records support
9 the level of complexity (“intensity”). Audits should occur periodically in order to
10 ensure that the billing sent out is correct.
11

12
13 4.134 This means that every hospital must have some type of internal audit
14 program and give feedback to medical providers regarding their billing and whether
15 their documentations support the complexity of the procedure for billing purposes.

16 4.135 To avoid and analyze billing errors (inadvertent or deliberate), a
17 hospital such as SMMC will have extensive internal controls in place, including with
18 the use of a compliance officer (sometimes called a chief operations officer) whose
19 job includes reviewing and analyzing billing.
20

21 4.136 Failure to have such controls, or audit processes, in place will allow
22 improper billing to flourish.

23 4.137 In addition, when a bonus system is in place (such as the uncapped
24

1 wRVU program that was in place here), it is imperative that there be a checks and
2 balances system in place to ensure that a medical provider (here, a spine surgeon) is
3 not reducing the standard of care or providing less than quality care. This involves
4 an integrated program that includes leadership. If bonus programs (like the wRVU
5 program) is in place, there must be a strong peer review and regulatory review
6 process in place to protect patients.
7

8 4.138 If a medical provider is generating wRVUs at a rate higher than
9 average, there must be a billing or compliance process in place to ensure quality,
10 safe care within the standard of care. A physician or surgeon who is the top earner
11 in a hospital system, second only to the hospital system's CEO, will raise the kind
12 of red-flag profile requiring an audit of records. *See also Bookwalter, supra.*
13

14 4.139 It is a breach of the standard of care for a hospital such as SMMC to
15 provide medically unnecessary and/or overly complex surgeries, and certainly it is a
16 breach to do so for the purpose of generating funds.
17

18 4.140 It is also a breach of the standard of care for a hospital such as SMMC
19 not to have an audit compliance program sufficient to ensure that these kinds of
20 anomalies are detected and stopped.
21

22 4.141 It further is a breach of the standard of care for a hospital such as
23 SMMC to reimburse, in a timely fashion, any wrongfully-earned funds due to billing
24 errors or overbilling (inadvertent or deliberate).

1 4.142 As described above, adherence to proper billing and audit processes
2 will result, on a more likely than not basis, in the removal of a medical provider who
3 engages in medically unnecessary, overly complex, or other improper surgeries as a
4 part of his or her ongoing practice.
5

6 4.143 Here, upon information and belief, because removal of either Doctor
7 did not occur in a timely manner, even after reports of misconduct, either Providence
8 / SMMC did not have appropriate audit and billing review processes in place (which
9 is below the standard of care) or it failed to adhere to those processes (which is also
10 below the standard of care), or it deliberately chose to overlook and/or encourage
11 the improper billings for financial purposes (which is both below the standard of
12 care and unlawful), or some combination of the above.
13

14 4.144 All of this points to a financial incentive system that was driving higher
15 volumes of surgery at higher claim reimbursement levels that were resulting in
16 medically unnecessary, overly complex, or otherwise improper spine surgeries. The
17 repeated, and continuous, nature of these results should have been obvious to
18 hospital managers. Yet Providence continued approving claims for submission to
19 government and private health care insurers. Upon information and belief, this
20 pattern confirms that the hospital system was performing below the standard of care,
21 either inadvertently or on purpose.
22

23 4.145 A material condition for reimbursement for neurosurgery services and
24

1 procedures under each federal health care program is that the services be medically
2 necessary. 42 U.S.C. § 1395y(a). As a material condition for payment of a claim,
3 Providers must certify they have or will provide medically necessary services, that
4 meet professional health care standards which are supported by evidence of medical
5 necessity, including to the government's standards of necessity. 42 U.S.C. 1320c-
6 5(a); 42 U.S.C. § 1395f(a). Making a false certification constitutes a false claim.¹⁶
7
8 A false claim of medical necessity is a crime under RCW 48.89.030(2), as is
9 knowingly causing the presentation of a false claim "for a health care payment"
10 under 48.89.030(1), and knowingly making "a false statement or false representation
11 of a material fact to a health care payer for use in determining rights to a health care
12 payment" under RCW 48.80.030(3).

14 4.146 The ongoing, detailed failure of Providence / SMMC to undertake a
15 review of the source of Dr. Dreyer's national outlier wRVU numbers, his nationally
16 high resulting compensation, his disproportionate generation of overall SMMC
17 revenue, and his insurance denials demonstrates, at a minimum, Providence's
18 reckless disregard, willful ignorance, and lack of caution for patient safety and for
19

21 ¹⁶ *Winter v. Gardens Regional Hospital and Medical Center*, 953 F.3d 1108, 1118 (9th Cir.
22 2019). For purposes of false claims liability, "[i]t is possible for a medical judgment to be 'false
23 or fraudulent' as proscribed by the" false claims statute. *Id.* (quoting *U.S. ex. rel Polukoff v. St.*
24 *Mark's Hospital*, 895 F.3d 730, 742 (10th Cir. 2018) ("claims for medically unnecessary
treatment are actionable under the FCA") (quoting *U.S. ex. Rel. Riley v. St. Luke's Episcopal*
Hosp., 355 F.3d 370, 376 (5th Cir. 2004)).

1 clinical integrity. For its part, Providence has both admitted knowledge of the
2 doctors' misconduct (*i.e.*, the Walla Walla Union Bulletin notice to its patients) and
3 denied any such knowledge. ECF 136:12. The sustained internal evidence of
4 Providence's notice of the doctors' ongoing false claims, however, demonstrates, at
5 a minimum, Providence's willful blindness to the false claims it was incentivizing,
6 processing, and profiting from. *United States v. Walter-Eze*, 869 F.3d 891, 909 (9th
7 Cir. 2017) (claimant's alleged ignorance of healthcare fraud warrants willful
8 blindness instruction). *See United States ex rel. Schutte v. SuperValu, Inc.*, 598 U.S.
9 739, 751 (2023) ("‘deliberate ignorance’ encompasses defendants who are aware of
10 a substantial risk that their statements are false, but intentionally avoid taking steps
11 to confirm the statement's truth or falsity").
12

13
14 4.147 Given the escalating information known by Providence management
15 with regard to both the Doctors, including via concerns expressed by SMMC staff,
16 the evidence is that Providence's participation in the fraudulent scheme was also
17 knowing and willful, and also constituted a ratification and adoption of this
18 misconduct for Providence's financial benefit.
19

20 **C. COMMON FACTS TO THE SCHEME TO DEFRAUD**

21 4.148 The overall pattern of conduct is outlined at ¶¶ 1.15-1.19, 4.62-4.69, &
22 4.102-4.103, and is credibly alleged to have occurred to hundreds of patients
23 (thousands, or potentially over 80 percent, per the Yam misconduct report, *see*
24

1 Exhibit 6). Those allegations are incorporated by reference as if fully set forth herein.

2 4.149 Further, the billing scheme itself is outlined at Section IV(B) above and
3 involves all surgery patients.

4 4.150 Further, the potential for harm – including but not limited to
5 Providence’s public admission in its full-page, June 5, 2022 advertisement in the
6 Walla Walla Union Bulletin that it violated the sacred trust of the Doctors’ patients,
7 see *M.N. v. MultiCare Health Systems*, 2 Wn. 3d 655, 541 P.3d 346 (2024)¹⁷ – also
8 involves all surgery patients.

9
10 4.151 As to additional patterns, upon information and belief, the Doctors
11 engaged in the following activity as a pattern, not as isolated occurrences, done in
12 order to fraudulently induce and secure patients’ consent for surgery, increase the
13 potential for insurance coverage, and maximize profit by maximizing RVUs:
14

- 15 a. Overreading or misreading imaging studies;
16 b. Exaggerating, misrepresenting, or falsifying subjective symptoms and/or
17 patient reports to bolster their surgical recommendations;
18 c. Exaggerating, misrepresenting, or falsifying potential outcomes (such as
19

20 ¹⁷ As noted in *M.N.*, where corporate negligence claims were upheld on a classwide basis with
21 regard to a risk of endangerment even if no endangerment occurred: “MultiCare and the Court of
22 Appeals improperly focused on the notification letter. The General Treatment Class learned of
23 the outbreak through the letter but was harmed by the allegedly negligent acts revealed in the
24 letter. If MultiCare had properly hired, supervised, and monitored potential drug diversion by
employees, notification likely would not have been necessary. The General Treatment Class’s
damages are not too remote from MultiCare’s acts to impose liability.” *M.N.*, 541 P.3d at 355.

- 1 threatening patients with paralysis if surgery did not take place);
- 2 d. Exaggerating the seriousness of objective findings;
- 3 e. Confidence building with patients by exaggerating or misrepresenting the
- 4 Doctors' skills;
- 5 f. Promoting unrealistic results of the surgeries;
- 6 g. Engaging in bait-and-switch (promoting one surgery but conducting
- 7 another surgery of higher complexity);
- 8 h. Labeling conditions serious or urgent when they were not; and
- 9 i. Labeling conditions unstable when they were not.

10 4.152 In contrast, what the Defendant surgeons and Defendant Providence did

11 NOT do in the pre-surgical relationship and informed consent discussions with

12 patients was, *inter alia*:

- 13 • Inform patients that there was a substantial probability that the Doctors
- 14 would not perform proper diagnosis or analysis of their condition but,
- 15 instead, would perform a surgery where all or part of the surgery was
- 16 medically unnecessary, for which the motive was financial gain and not
- 17 proper medical treatment;
- 18 • Inform patients that both before and after surgery, Providence either
- 19 directly or through its agents, servants, and/or employees, including but
- 20 not limited to the Doctors, would make intentional, non-accidental and
- 21 non-inadvertent false representations in their medical records exaggerating
- 22 their need, and minimizing their risks, for surgery, for which the motive
- 23 was financial gain and not proper medical treatment;
- 24 • Inform patients that the false information placed in their medical records
- could adversely affect their future medical care by doctors who relied on
- these false records and that the false records could influence future
- treatment decisions for the rest of their lives;
- Inform patients that Providence exercised the control or supervision over

1 the methods by which the Doctors performed their work or conduct any
2 review of the Doctors to ensure the patients would receive the best
treatment which was promised to them;

- 3 • Inform patients that the Doctors' financial incentive to perform a high
4 pattern of medically unnecessary procedures was due to Providence's
5 incentivized wRVU bonus program, which profited all Defendants;
- 6 • Inform patients that they were unwitting participants in the scheme to
7 defraud, with their surgeries being the impetus behind either the improper
8 billing or the coverup for the improper billing for purposes of carrying out
the scheme, all in violation of RCW 48.80.030 and 48.80.030(4) as well as
9 in violation of, e.g., theft by deception and money laundering;
- 10 • Inform patients that, rather than correct the Doctors' actions, even as
11 reported by their medical supervisor, Providence was working to conceal
the actions, for which the motive was financial gain and not proper medical
treatment.

12 **D. COMMON FACTS TO PROVIDENCE'S FAILED OVERSIGHT**

13 4.153 The overall pattern of Providence's failure in its oversight and
14 supervision duties is outlined throughout this Complaint, as well as in Section IV(B)
15 above (with regard to billing). Those allegations are incorporated by reference as if
16 fully set forth herein.

18 4.154 Standards of care for hospital accountability and hospital oversight of
19 quality of care, peer review, credentialing, management of grievances, patient safety,
20 and corporate integrity are governed by national standards, state laws, and hospital
21 bylaws and policies. National regulatory and accreditation bodies, including Center
22 for Medicare and Medicaid Services (CMS) Conditions of Participation, The Joint
23

1 Commission, and Det Norske Veritas, establish national, government standards and
2 provide oversight applicable to hospitals throughout the United States. In the State
3 of Washington, under Washington State Revised Code of Washington (RCW)
4 70.41.120, the Washington Department of Health is responsible for determining
5 compliance with hospital standards and regulations. Washington state RCW
6 70.41.122 Exemption from 70.41.120 for hospitals accredited by other entities states
7 that for hospitals accredited by other entities, surveys conducted on hospitals by the
8 Joint Commission shall be deemed equivalent to a department survey for purposes
9 of meeting the requirements for the survey specified in RCW 70.41.120. SMMC is
10 accredited and surveyed by the Joint Commission. Joint Commission and CMS
11 national standards are applicable under state law to Providence SMMC.
12
13

14 4.155 The standard of care requires healthcare organizations to develop and
15 implement a robust process for addressing patient complaints and grievances. The
16 standard of care requires responses to patient complaints and grievances to protect
17 patients. In addition, both federal and accreditation regulatory requirements demand
18 appropriate follow up by healthcare organizations to be compliant. The Centers for
19 Medicare and Medicaid Services (CMS) outlines requirements for addressing
20 grievances in its Conditions of Participation (CoPs), and therefore these apply to
21 patients for whom Providence submitted claims to Medicare and Medicaid. They are
22 also appropriate recommendations for handling complaints and grievances from all
23
24

1 patients-regardless of payment source.

2 4.156 A hospital must protect and promote each patient's rights. This federal
3 regulatory standard requires that the hospital establish a process for prompt
4 resolution, and that the hospital governing body is responsible for the effective
5 operation of the grievance process. The Joint Commission and other accreditors'
6 Complaint Resolution and Medical Staff standards also require that accredited
7 facilities address and resolve complaints from patients and their families, to protect
8 patients from harm. This complaint required immediate referral to a quality
9 improvement or related committee and should have been subject to a clear hospital
10 process to ensure this occurred.
11

12 4.157 Detailed and significant direct and circumstantial evidence will show
13 that Providence / SMMC failed in meeting these intricate, detailed standards as early
14 as 2013 and on through the entire time of the Doctors' employment, culminating in
15 a failure to report the Doctors to the proper authorities; to warn other prospective
16 employers; and to repay the ill-gotten gains.
17

18 4.158 Providence Compliance officials conducted annual TENS chart audit
19 of physicians. These audits compare documentation in the chart, CPT coding, ICD
20 10 codes, and billing for alignment and compliance. Audits for Providence SMMC
21 for Dr. Dreyer were found for 2013 and 2014, but there is no indication audits were
22 done through 2015 through 2018.
23

1 4.159 In 2018, the first quarter PEPPER (The Program for Evaluating
2 Program Payments Electronic Report) reports were sent to Wanda Paisano (Director
3 of Quality, Compliance, Integrity, Privacy, and Patient Safety Officer for Providence
4 SMCC) and Becky Cameron, among others. The PEPPER report highlighted in red
5 that the percentage of discharges with spinal fusion documented had continued to
6 range from 89% to 98.6 % between Q2 2015 and Q1 2018. This ‘red flag’ was
7 annotated to include a warning and suggestion of intervention.
8

9 4.160 There is no indication that there was ever any meaningful intervention
10 by Providence SMMC to address this red flag. But there is evidence of continuing
11 Extreme Exceeding of Benchmarks.
12

13 4.161 Data were available to Providence SMMC Dr. Dreyer’s wRVUs and
14 compensation compared to benchmarks for each year between 2013 and 2018. This
15 is simple and unsophisticated data that tells us how much volume a surgeon is
16 running through the OR, and what he is billing for. High wRVU = high salaries.
17 This can be, and was, an incentive to commit fraud.
18

19 4.162 Overworked surgeons are a risk for patient safety. Surgeries performed
20 for financial benefit are a clear and present danger to patient safety. Providence’s
21 subsequent imposition of a secret “safety pause” on Dr. Dreyer for what it would
22 much later label a breach of “sacred trust” with its patients, reflects its awareness of
23 the patient risks associated with false claims.
24

1 4.163 Providence SMMC would know that high wRVUs as seen with Dr.
2 Dreyer (being one of the highest paid employees in the entire Providence system)
3 should prompt a review of the coding correlation with the documentation. It did not
4 – nor did it prompt a quality review.

5
6 4.164 This is so despite the fact that this financial review would not
7 necessarily also include a review of quality or safety concerns related to improper
8 documentation (or inadequate correlation between documentation and other clinical
9 data). Although medical necessity is a foundational component of quality, this aspect
10 of care was neither audited nor reviewed by Providence despite consistent exceeding
11 of national averages in wRVUs.

12
13 4.165 Dr. Dreyer has advised that he was never alerted or provided any
14 feedback of any reviews or concerns about the appropriateness of his clinical care,
15 his complication rates, or his behavior after 2014.

16 4.166 Providence has asserted affirmatively that nothing was done in respect
17 to reviewing the details of Dr. Dreyer's practice specifically until the spring or
18 summer of 2018.

19
20 4.167 As pleaded earlier, *see* ¶¶ 4.73-4.82, on May 22, 2018, Dr. Dreyer was
21 placed on “administrative leave” or, as Providence has described it, a “practice” (or
22 “safety”) “pause.” This administrative leave was ordered by executive leaders at
23 Providence / SMMC. Despite the fact that Providence / SMMC determined that Dr.

1 Dreyer was required to cease clinical practice at that time out of patient safety
2 concerns, nobody at Providence / SMMC reported this restriction to the NPDB or
3 the DOH.

4 4.168 This failure on Providence SMMC's part has been improperly justified
5 (and rejected by the DOH, *see* ¶¶ 4.117-4.119) by suggesting that the educated
6 administrators of the Providence system believed that, since this was
7 "administrative," it did not require the suspension of Dr. Dreyer's privileges at
8 SMMC and therefore did not require reporting. Upon information and belief, the
9 same was said with regard to Dr. Eskens. This tactical approach to avoiding
10 mandatory reporting requirements was rejected by the DOH and Providence is now
11 on a corrective plan with the DOH with regard to complying with those requirements
12 in the future. See *id.*

13 4.169 As noted earlier, on November 13, 2018, Dr. Dreyer "voluntarily"
14 resigned from Providence Medical Group.

15 4.170 On April 22, 2019, Dr. Dreyer sent a response to an email request for
16 his reappointment application stating that: "Well, today is the day, and it sounds like
17 Providence (Renton) is not interested in having me back. So I will allow my hospital
18 privileges to lapse."
19

20 4.171 On May 8, 2019, MultiCare performed its due diligence to verify Dr.
21 Dreyer's affiliation with Providence SMMC. Providence Health & Services
22

1 responded to MultiCare with the statement: “No adverse professional review action
2 as defined in the Health Care Quality Improvement Act has been taken regarding
3 this practitioner. That means that there has been no reduction, restriction,
4 suspension, revocation, denial, or involuntary relinquishment of the practitioner's
5 staff membership or clinical privileges.”
6

7 4.172 This was false, and its falsity was uniquely known to Defendants
8 Providence and Dreyer who, together with Dr. Sandquist, had continued to conceal
9 the true state of affairs about the origins, purpose, and significance of Providence's
10 secret “safety pause” on Dreyer's surgeries.
11

12 4.173 Providence SMMC failed to have an adequate process to monitor and
13 evaluate the competency of the Doctors to hold clinical privileges and/or deliberately
14 chose not to monitor and evaluate that competency. Providence / SMMC's failure to
15 conduct and/or have a process in place to conduct such a process would have
16 prompted a proficient review that would have revealed the conduct alleged herein.
17

18 4.174 Providence SMMC failed to adopt and/or implement effective policies
19 and procedures for quality reviews and responses to staff or patient concerns. Had
20 they had such effective policies, or had they implemented such policies, the
21 allegations made herein, including the financial red flag data warranting quality
22 reviews, and the concerns raised (including by the practice manager and
23 neurosurgery chief) would have resulted in focused quality reviews which, in turn,
24

1 would have revealed the exaggerated clinical findings and overdocumentation of
2 medically unnecessary procedures.

3 4.175 Providence SMMC failed to have an effective Peer Review Process
4 and/or failed to implement an effective Peer Review Process. Although some cases
5 appear to have been referred to the surgery subcommittee over time, there is no
6 evidence that the numerous concerns raised by Dr. Yam and/or others, or flagged by
7 excessive wRVUs, made their way into an appropriate peer review process with
8 corrective feedback to Dr. Dreyer.
9

10 4.176 Had Providence / SMMC had an effective Peer Review Process and
11 Patient Safety Program, or implemented such a process or program, the identified
12 concerns about overuse of diagnosis, of “urgent” classifications, and of excessive
13 wRVU's would have led to an investigation of medical appropriateness and likely
14 would have resulted in a prompt suspension of privileges and investigation of fraud.
15

16 4.177 Although Providence / SMMC executive leadership determined that
17 Dr. Dreyer should cease his clinical practice (at least temporarily) in May 2018, and
18 that Dr. Elskens do the same in 2017, they failed to report these significant events to
19 the NPDB or the DOH. Providence / SMMC effectuated summary suspension of the
20 Doctors’ privileges, and their attempt to obscure this fact by calling it (in Dr.
21 Dreyer’s situation) a “practice pause” or an “administrative leave” only supports
22 allegations of concealment, coverup, accomplice liability and guilty knowledge on
23
24

1 the part of Providence. The purpose of reporting is to protect patients. Providence's
2 efforts to conceal, rather than report, exhibited an egregious disregard for patients
3 and patient safety as well as an egregious disregard of their duties and
4 responsibilities under the law.

5
6 4.178 As late as May 2019, Providence SMMC continued to exhibit reckless
7 disregard for patient safety. In their response to verification requests by MultiCare,
8 Providence invoked the Health Care Quality Improvement Act. A significant
9 purpose of the Health Care Quality Improvement Act is to protect patients.
10 Providence was denying that any of their professional review activities adversely
11 affected the clinical privileges of Dr. Dreyer. This egregious stance of Providence
12 appears to protect itself by substituting the truth with an effort to avoid
13 accountability with semantics. This behavior showed a reckless disregard for the
14 safety of future patients of Dr. Dreyer as well as a reckless disregard for the former
15 surgical patients of the Doctors who were unaware of the circumstances under which
16 their surgeries had taken place.
17

18
19 4.179 The facts as set forth herein tell us that during the relevant period
20 Providence SMMC either did not have an active quality verification oversight
21 program in place to effectively monitor spine surgeons to assure quality control and
22 patient safety, or that Providence SMMC did not follow the policies and practices in
23 place.
24

1 4.180 In respect to the facts above, Providence / SMMC violated the standards
2 of care in a sequence of failures that systemically and repeatedly put patient safety
3 at risk and allowed the Doctors to continue to practice when abundant evidence
4 suggested their surgeries were improper. Based on the facts provided, had such a
5 necessary rigorous review been conducted in a timely manner (instead of a refusal
6 to address the issues), a considerable number of patients would not have had an
7 improper surgery by Dr. Jason Dreyer.
8

9 **E. DEFENDANTS' Aiding and Abetting and Accomplice Liability and**
10 **Entity and Agent Liability**

11 4.181 Due to their actions and inactions as described herein, Defendants are
12 liable for the harms to plaintiffs under common law aiding and abetting and pursuant
13 to RCW 9A.08.020 and 9A.08.030.

14 4.182 Under Washington law, a defendant is liable "[f]or harm resulting to a
15 third person from the tortious conduct of another" and one is subject to liability if
16 he:
17

18 (a) does a tortious act in concert with another or pursuant to a common design
19 by him; or

20 (b) knows that the other's conduct constitutes a breach of duty and gives
21 substantial assistance or encouragement to the other so to conduct himself;
or

22 (c) gives substantial assistance to the other in accomplishing a tortious result
23 and his own conduct, separately considered, constitutes a breach of duty to
24

1 the third person.¹⁸

2 4.183 All three types of aiding and abetting common law liability apply here
3 to render Defendants liable for their concerted actions, and their substantial
4 assistance or encouragement of the tortious conduct of each other.
5

6 “(a) a person is guilty of a crime if it is committed by the conduct of
7 another person for which he or she is legally accountable;” which
8 includes where “(2)(b))He or she is made accountable for the conduct
9 of such other person by this title or by the law defining the crime; or
10 (2)(c) “He or she is an accomplice of such other person in the
11 commission of the crime.” RCW 9A.08.020(1) & (2).

12 4.184 Washington law also provides for liability for complicity in offenses
13 under RCW 9A.08.020.

14 4.185 Liability as an accomplice applies if: “ (3) With knowledge that it will
15 promote or facilitate the commission of the crime, he or she: (a) Solicits, commands,
16 encourages, or requests such other person to commit it; or (b) Aids or agrees to aid
17 such other person in planning or committing it; or (c) His or her conduct is expressly
18 declared by law to establish his or her complicity. RCW 9A.08.020(3).

19 4.186 Defendants’ conduct, as alleged herein, renders them liable under
20 Washington common and statutory law for the crimes and torts alleged herein as
21

22 ¹⁸ *Perkumpulan Inv. Crisis Ctr. Dressel--WBG v. Regal Fin. Bancorp, Inc.*, 781 F. Supp. 2d
23 1098, 1114–15 (W.D. Wash. 2011) (quoting RESTATEMENT (SECOND) OF TORTS § 876
24 (1979) (cited with approval in *Martin v. Abbott Laboratories*, 102 Wash.2d 581, 689 P.2d 368,
378 (1984)).

1 aiders and abettors, accomplices, and persons legally accountable for each other's
2 tortious and criminal conduct. Defendant Providence Health Services Washington,
3 for example, provided substantial assistance to the false claims of Drs. Dreyer and
4 Elskens by providing facilities, staff, equipment, compensation, billing,
5 management, cover and concealment services for the doctors' surgeries. Defendant
6 Providence St. Joseph, for example, provided substantial assistance to the false
7 claims of Providence Health Services Washington by providing financing, facilities,
8 budgeting, management, compensation, and billing services for the doctors'
9 surgeries. Both entities, for example, worked together in providing the above.
10

11
12 4.187 Washington law makes entities and their agents liable for each other's
13 offenses under RCW 9A.08.030. Defendants are entities or their agents who are
14 liable for each other's offenses because of the entities' failure to perform duties
15 imposed by law (subsection 2(a) or the tolerated by a high managerial agent
16 (subsection 2(b), or the offense conduct is engaged in by its agents (subsection
17 2(c)). The agent defendant persons are liable for the offenses they performed in the
18 name of the entity defendants (subsection 3), or for recklessly or criminally negligent
19 failure to perform duties they primarily shared with entity defendants.
20

21 **V. INDIVIDUAL PLAINTIFFS / CLASS REPRESENTATIVES**

22 5.1 Plaintiffs, on behalf of themselves and those similarly situated, reallege
23 and incorporate by reference paragraphs 1.1 through 4.186 as if fully set forth herein.
24

1 5.2 All surgery patients of the Doctors at Providence who were subject to
2 the RVU compensation scheme in connection with their treatment are proposed
3 Class Members, whether or not they also were victims of an unnecessary or
4 otherwise improper surgery.

5
6 5.3 This means that all surgery patients of the Doctors at Providence are
7 potential class members due to the fact that they either (a) had surgeries with
8 associated RVU billing or (b) had surgeries in which the Doctors were auditioning
9 to be a candidate for RVU bonuses.

10 5.4 Providence agrees with this definition of proposed class members. In
11 its first Opposition to Plaintiffs' Motion for Remand, Providence examined the
12 complaint allegations and characterized them as "putting at issue—all surgeries
13 performed by these doctors" because it alleged that "such unnecessary or improper
14 procedures were 'part of a pattern and practice,' thus potentially calling into
15 question" all surgeries performed by the Doctors. ECF-42:11.

16
17 5.5 All surgery patients of Dr. Dreyer at MultiCare are also proposed Class
18 Members, whether or not they also were victims of unnecessary surgeries. This is so
19 because Providence failed to report Dr. Dreyer, actively concealing the financial
20 scheme, improperly allowing Dreyer to conduct surgeries at MultiCare after
21 Providence, which makes all those surgeries improper. Providence failed to report
22 Dreyer in order to protect itself, to protect against scrutiny of its incentive
23

1 compensation system, to protect its financial relations with government and private
2 health insurers, to protect against patient lawsuits, and to conceal its profiteering.

3 5.6 All surgery patients of the Doctors at Providence and MultiCare
4 suffered violation of their person with the surgery incision as part of the fraudulent
5 scheme. All of these surgery patients of the Doctors suffered anxiety, emotional
6 injury, economic damage, and physical damage as a result of being subjected to the
7 fraudulent scheme of the Defendants.
8

9 5.7 Because the financial scheme was broad and repeated, done with the
10 purpose of conducting medically unnecessary, improper surgeries for financial
11 benefit, the vast majority of proposed class members are also victims of unnecessary
12 surgeries, including the Plaintiffs listed below, whose experiences, and surgeries, are
13 typical of those experiences, and surgeries, listed in this Complaint.
14

15 5.8 Each of the below-listed Plaintiff Representatives was targeted in the
16 fraudulent scheme and practice of profit above patient safety conspiracy that is the
17 subject of the claims pled herein below.
18

19 5.9 As a result of being victimized by Dr. Dreyer and/or Dr. Elskens in the
20 care of PROVIDENCE WASHINGTON HEALTH AND SERVICES, specifically,
21 ST. MARY'S MEDICAL CENTER, as set forth and supported by the factual
22 allegations above and claims pled herein below, the below-listed Plaintiffs suffered
23 permanent damages, to include, without limitation: emotional distress, economic
24

1 loss, disfigurement, bone structural damage, pain, suffering, and loss of enjoyment
2 of life.

3 5.10 Where the below-listed Plaintiffs have spouses, and/or where a
4 proposed class member has a spouse, their spouses have suffered damages in the
5 form of the loss of consortium, love, compassion, and companionship as a result of
6 their spouse being victimized by Defendants.
7

8 5.11 Where the below-listed Plaintiffs (and/or where proposed class
9 members) are representatives of the estate and/or have a survivor action due to
10 having lost a loved one who was a victim of the Doctors' surgeries, they also have
11 suffered damages as a result of their loved one being victimized by Defendants.
12

13 **PROVIDENCE / SMMC PLAINTIFFS**

14 5.12 In addition to the named plaintiffs below (Ms. Angulo, Mr. Keller, Mr.
15 Nesje, Mr. Summers, and Ms. Bash per Mr. Bash's estate), the Plaintiffs have
16 notified the Court of about 100 Providence patients, currently unnamed per Court
17 order, *see* ECF 223:7, many of whom are listed in the stricken Fourth Amended
18 Complaint currently filed under seal. ECF 189.
19

20 5.13 These additional Providence patients are currently putative class
21 members, as are all the Doctors' surgical patients who have yet to receive notice and
22 come forward.

23 5.14 Neurosurgical medical experts have been reviewing, and will continue
24

1 to review, medical files of Defendants' patients. From this review thus far, Plaintiffs'
2 experts have identified multiple patients, including all named Plaintiffs, as having
3 undergone medically unnecessary or otherwise improper surgeries that fit the
4 pattern, and are typical of, the pattern contained within the 2022 SA, ¶ D (Exhibit 2)
5 and patterns identified by Dr. Yam (*e.g.*, Exhibit 6), all of which is supported by
6 credible evidence that these were repeated patterns affecting hundreds of patients
7 and potentially greater than 80 percent of Dreyer's surgical patients. *See* ¶¶ 1.15-
8 1.19; 4.62-4.69.

10 5.15 None of the below Plaintiffs, and none of the currently-identified
11 known, but still putative, class members listed above (and, upon information and
12 belief, none of the Doctors' Providence surgical patients, which number at least
13 1,750), gave informed consent to any surgery conducted because none were
14 informed that a surgery by one of the Doctors was part of a pattern of false claims
15 by the Doctors and, as a result, involved a high risk of having a medically
16 unnecessary procedure performed upon them for which the motive was financial
17 gain and not proper medical treatment, and other deficiencies (as alleged in
18 Paragraph 4.152, *supra*).

21 5.16 **CAROLINE ANGULO**. Female. 61 years old. 53 years old at the time
22 of her first surgery (4/25/2016); 54 years old at the time of her second surgery
23 (11/18/2017). Hospital: SMMC. Surgeon: Dr. Daniel Elskens and Dr. Jason Dreyer.

1 Insurance: Medicare or Medicaid.

2 5.17 Surgery 1: April 25, 2016. Dr. DANIEL ELSKENS, MD.

3 5.17.1 Ms. ANGULO reported lower back pain. Dr. ELSKENS
4 recommended cervical surgery instead of, or prior to, lumbar surgery;
5

6 5.17.2 Ms. Angulo had numerous concerning or disqualifying
7 comorbidities;

8 5.17.3 Trusting Dr. Elskens, and in reliance of his advice and stated
9 opinion, Ms. Angulo agreed to the cervical surgery;

10 5.17.4 The procedure performed by Dr. Elskens included cervical
11 fusion at levels C5 through C7 and was performed using the anterior approach
12 only. He also did a carpal tunnel surgery during the same surgery;
13

14 5.17.5 The cervical surgery went poorly. Ms. Angulo had to remain in
15 the hospital for over a month. Her vocal cords were damaged, and she could
16 not speak. She has never recovered from this surgery. Moreover, during her
17 follow-up treatment, Dr. Elskens, was suddenly unavailable, leaving Ms.
18 Angulo without a neurosurgeon.
19

20 5.17.6 The surgery was medically unnecessary or otherwise improper
21 and was performed for the purpose of financial gain for Dr. Elskens and
22 Providence.

23 5.18 Surgery 2: November 18, 2017. Dr. JASON DREYER, DO.
24

1 5.18.1 After her continued reported concerns of low-back pain, Dr.
2 Dreyer informed Ms. ANGULO he saw a “big problem” with her neck that
3 required more surgery.

4 5.18.2 Trusting Dr. Dreyer, and in reliance of his advice and stated
5 opinion, Ms. Angulo agreed to the recommended cervical surgery.

6 5.18.3 The surgery performed was a cervical/thoracic fusion, with
7 both anterior and posterior approach. According to what the hospital provided
8 her, the fusion ranged from either levels C3 through C7, or C3 through T2 –
9 she was provided with medical ID cards for both.

10 5.18.4 Ms. Angulo had even more comorbidity concerns before this
11 surgery than before the last one. She was still struggling with inability to
12 speak, and constant pain.

13 5.18.5 The surgery was medically unnecessary or otherwise improper
14 and was performed for the purpose of financial gain for Dr. Dreyer and
15 Providence.

16 5.19 Prior to no earlier than April 12, 2022, Ms. Angulo was unaware of
17 Providence’s admission of salient facts as outlined herein and in its settlement with
18 the DOJ; or that the procedures conducted on her by Dr. Dreyer were unnecessary
19 or otherwise improper acts that constituted a part of an unlawful financial scheme
20 and a breach of the standard of care.

1 5.20 Upon information and belief, Providence, Dr. Elskens and Dr. Dreyer
2 submitted billing that falsely stated the surgeries were medically necessary and
3 otherwise proper.

4 5.21 As a result of these unnecessary or otherwise improper surgeries,
5 CAROLINE ANGULO has suffered emotional distress, economic damage, and
6 permanent debilitating harm, including job loss; disability designation; inability to
7 walk; difficulty sitting, standing and laying; nerve problems; choking when she eats;
8 high pain levels daily; and failed treatments resulting in an inability to breathe,
9 requiring paramedic-transported emergency trips to the hospital; is on pain
10 medication daily, and suffers from fatigue, anxiety, and depression.
11

12 5.22 **ERIC KELLER**, 58 years old. Two surgeries conducted by Dr. Dreyer
13 at SMMC: cervical spine, August, 2017; lumbar spine, January 2018.
14

15 5.23 Surgery 1: August, 2017. DR. JASON DREYER, DO
16

17 5.23.1 Mr. KELLER reported low back pain. Following his typical,
18 common practice of encouraging patients to undergo cervical surgery first,
19 Dr. DREYER recommended cervical surgery instead of, or prior to, lumbar
20 surgery, which would revise a prior, successful cervical fusion that was
21 causing Mr. KELLER no pain or difficulty;

22 5.23.2 When Mr. Keller advised Dr. Dreyer, “my neck isn’t the
23 problem,” Dr. Dreyer informed him he had more wrong with his neck than he
24

1 thought he did, and that it was so unstable that he risked paralysis during any
2 proposed lumbar surgery if he did not agree to the cervical surgery first;

3 5.23.3 Mr. Keller had concerning or disqualifying comorbidities;

4 5.23.4 Trusting Dr. Dreyer, and in reliance of his advice and stated
5 opinion, Mr. Keller agreed to the recommended cervical surgery;
6

7 5.23.5 Mr. Keller's cervical surgery took place in or around August
8 2017. Following this procedure, Mr. Keller was not able to return to work.
9 He has never significantly improved from this surgery;

10 5.23.6 The surgery was medically unnecessary or otherwise improper
11 and was performed for the purpose of financial gain for Dr. Dreyer and
12 Providence.
13

14 5.24 Surgery 2: November 18, 2017. Dr. JASON DREYER, DO

15 5.24.1 Mr. Keller reported with concerns of continued lumbar pain. Dr.
16 Dreyer told Mr. Keller that if he allowed him to conduct lumbar surgery, he
17 would be relatively pain free and would be able to return to work.

18 5.24.2 Trusting Dr. Dreyer, and in reliance of his advice and stated
19 opinion, Mr. Keller agreed to the cervical surgery.
20

21 5.24.3 When his insurance declined the request for this elective surgery
22 that did not have sufficient conservative care options exhausted, Dr. Dreyer
23 transformed the elective procedure into an emergent procedure, via the
24

1 emergency department, thereby bypassing the need for clearance for the
2 elective procedure, telling Mr. Keller that the insurance company would have
3 to pay for the surgery since it would now be termed an “emergency
4 procedure;”

5
6 5.24.4 Mr. Keller was admitted to SMMC through the emergency
7 department, and on or about January 18, 2018, Dr. Dreyer performed the
8 lumbar surgery.

9 5.24.5 The lumbar surgery caused permanent and debilitating nerve
10 damage from which Mr. Keller has never recovered, and never will recover.

11 5.24.6 The surgery was medically unnecessary or otherwise improper
12 and was performed for the purpose of financial gain for Dr. Dreyer and
13 Providence.
14

15 5.25 Prior to no earlier than April 12, 2022, Mr. Keller was unaware of
16 Providence’s admission of salient facts as outlined herein and in its settlement with
17 the DOJ; or that the procedures conducted on him by Dr. Dreyer were unnecessary
18 or otherwise improper acts that constituted a part of an unlawful financial scheme
19 and below the standard of care.
20

21 5.26 Upon information and belief, Providence and Dr. Dreyer submitted
22 billing that falsely stated the surgeries were medically necessary and otherwise
23 proper.
24

1 5.27 As a result of these unnecessary or otherwise improper surgeries, Eric
2 Keller has suffered emotional distress, economic damage, and permanent
3 debilitating harm, including, without limitation, job loss; disability designation;
4 constant pain and discomfort; constant groin sensitivity and pain; pain radiating
5 down both legs into his feet; muscle lock-ups (making him bedridden for days);
6 significant difficulty walking; inability to sleep, sit or stand for any period of time;
7 is on pain medication daily, and suffers from fatigue, anxiety, and depression.
8

9 5.28 **EBEN NESJE**. 44 years old. Lumbar surgery conducted by Dr. Dreyer
10 at SMMC. Insurance: Labor & Industries Washington State.
11

12 5.29 Surgery: August 14, 2014. Dr. JASON DREYER, DO.

13 5.29.1 Mr. NESJE reported lower back pain. Dr. DREYER
14 recommended three-level fusion surgery (L3 to L4, L4 to L5, and L5 to S1),
15 stating he could fix him without a problem and that, within six months, Mr.
16 NESJE would be back to work functioning at a one hundred percent capacity;
17

18 5.29.2 Mr. NESJE had numerous concerning or disqualifying
19 comorbidities, and he was only 34 years at the time;

20 5.29.3 Trusting Dr. DREYER, and in reliance of his advice and stated
21 opinion, Mr. NESJE agreed to the three-level fusion surgery;

22 5.29.4 The surgery was unsuccessful. Mr. NESJE was unable to return
23 to work and he has never recovered from the surgery.
24

1 5.29.5 The surgery was medically unnecessary or otherwise improper
2 and was performed for the purpose of financial gain for Dr. Dreyer and
3 Providence.

4 5.30 On or about July 12, 2016, Mr. NESJE consulted with Dr. Matthew
5 Fewel, a neurosurgeon in Richland, Washington working for Providence Kadlac
6 Medical Center. Dr. Fewel recommended a possible revision surgery as a result of
7 placement of unnecessary failed hardware by Dr. Dreyer, but only after further
8 workup, after Mr. Nesje stopped tobacco use and other pain medications used for
9 pain management. Other consultations done after weight loss and quitting tobacco
10 placed chances for successful revision surgery very low.
11

12 5.31 Mr. Nesje was one of many former patients of Dr. Dreyer and
13 Providence who sought a second opinion from Dr. Fewel to obtain relief from these
14 medically unnecessary, overly complex or otherwise improper surgeries. Dr. Fewel
15 ultimately began to track the patients who came to him as a result of failed surgeries
16 done by Dr. Dreyer and ultimately reported Dr. Dreyer's pattern of conducting
17 unnecessary or otherwise improper surgeries for profit as substandard care to the
18 DOH.
19
20

21 5.32 Per Dr. Fewel's report, it had become clear to him that these improper
22 surgeries were not an "isolated occurrence" and he had begun to keep a record of
23 patients he encountered from Providence / SMMC and that he was limiting his report
24

1 to DOH to the 11 most egregious cases.

2 5.33 Eben Nesje's file was among the 11 patient cases that Dr. Fewel
3 reported – and one of the files that the DOH expert in review, Dr. Abhineet
4 Chowdhary, found to be below the standard of care, which supported the suspension
5 and ultimate permanent surrender of Dr. Dreyer's license to practice medicine.
6

7 5.34 Dr. Chowdhary's conclusion, based on the records he reviewed, was
8 that there had been a “departure from the standard of care for performing extensive
9 spine surgery without clear indications” for Mr. Nesje's surgery.
10

11 5.35 Dr. Fewel's report resulted in the restriction of Dr. Dreyer's medical
12 license in March 2021, and ultimately Dr. Dreyer's lifetime ban to practice medicine
13 in Washington State, as well as other restrictions.

14 5.36 Prior to no earlier than April 12, 2022, Mr. Nesje was unaware of
15 Providence's admission of salient facts as outlined herein and in its settlement with
16 the DOJ, or that the DOH was looking into his care by Dr. Dreyer, or that the
17 procedure conducted on him by Dr. Dreyer was unnecessary or otherwise improper,
18 constituting a part of an unlawful financial scheme and resulting in substandard care.
19

20 5.37 Upon information and belief, Providence and Dr. Dreyer submitted
21 billing that falsely stated the surgeries were medically necessary and otherwise
22 proper.

23 5.38 As a result of these unnecessary or otherwise improper surgeries, Eben
24

1 Nesje has suffered emotional distress, economic damage, and permanent debilitating
2 harm, including, without limitation, job loss; disability designation with a
3 designation of depression and anxiety due to surgery; a diagnosis of Failed Back
4 Surgery Syndrome; constant low back pain and discomfort and partial leg pain;
5 significant difficulty walking; inability to sleep, sit or stand for any period of time;
6 is on pain medication daily, and suffers from fatigue, anxiety, and depression.
7

8 5.39 **KIRK SUMMERS**, now 57 years old, two surgeries by Dr. Dreyer:
9 Surgery dates: February 25, 2015 Lumbar; July 25, 2015 Cervical. Former ferrier
10 (horse shoer).
11

12 5.40 Surgery 1: February 25, 2015. Dr. JASON DREYER, DO.

13 5.40.1 Reported with lower back pain. Dr. DREYER informed Mr.
14 SUMMERS he could make him as good as new, that he would be back
15 shoeing horses within 90 days.

16 5.40.2 Mr. Summers had concerning or disqualifying comorbidities;

17 5.40.3 Trusting Dr. Dreyer, and in reliance of his advice and stated
18 opinion, Mr. Summers agreed to the recommended two-level fusion lumbar
19 surgery.
20

21 5.40.4 Mr. Summers woke from surgery in agonizing pain in his lower
22 back and into his legs. He had lost complete use of his left leg. The pain has
23 never stopped and will remain for the rest of his life.
24

1 5.40.5 The surgery was medically unnecessary or otherwise improper
2 and was performed for the purpose of financial gain for Dr. Dreyer and
3 Providence.

4 5.41 Surgery 2: July 15, 2015. Dr. JASON DREYER, DO.

5
6 5.41.1 As Dr. Dreyer was assuring Mr. Summers that his pain from
7 the first surgery would improve over time, he convinced Mr. Summers to have
8 a two-level cervical spine surgery. At the time, Mr. Summers felt some
9 tingling in his hands. Dr. Dreyer informed Mr. Summers he could make him
10 as good as new. At no time did Dr. Dreyer recommend conservative care or
11 nerve blocks to determine the origin of his hand tingling.
12

13 5.41.2 Mr. Summers still had his concerning or disqualifying
14 comorbidities;

15 5.41.3 Trusting Dr. Dreyer, and in reliance of his advice and stated
16 opinion, Mr. Summers agreed to the two-level cervical spine surgery.

17 5.41.4 Following this surgery, Mr. Summers no longer is able to lift
18 his arms above his head without pain and numbness.

19
20 5.41.5 The surgery was medically unnecessary or otherwise improper
21 and was performed for the purpose of financial gain for Dr. Dreyer and
22 Providence.

23 5.42 In or around 2018, Mr. Summers consulted with Dr. Matthew Fewel, a
24

1 neurosurgeon in Richland, Washington at the time. Dr. Fewel recommended no
2 additional surgery.

3 5.43 Mr. Summers was one of many former patients of Dr. Dreyer and
4 Providence who sought a second opinion from Dr. Fewel to obtain relief from these
5 medically unnecessary, overly complex or otherwise improper surgeries. Dr. Fewel
6 ultimately began to track the patients who came to him as a result of failed surgeries
7 done by Dr. Dreyer and ultimately reported Dr. Dreyer's pattern of conducting
8 unnecessary or otherwise improper surgeries for profit as substandard care to the
9 DOH.
10

11 5.44 Per Dr. Fewel's report, it had become clear to him that these improper
12 surgeries were not an "isolated occurrence" and he had begun to keep a record of
13 patients he encountered from Providence / SMMC and that he was limiting his report
14 to DOH to the 11 most egregious cases.
15

16 5.45 KIRK SUMMERS' file was among the 11 patient cases that Dr. Fewel
17 reported – and one of the files that the DOH expert in review, Dr. Abhineet
18 Chowdhary, found to be below the standard of care, which supported the suspension
19 and ultimate permanent surrender of Dr. Dreyer's license to practice medicine.
20

21 5.46 Dr. Chowdhary's conclusion, based on the records he reviewed, was
22 that there had been a "departure from the standard of care for performing extensive
23 spine surgery without clear indications" for Mr. Summers' surgery.
24

1 5.47 Dr. Fewel's report resulted in the restriction of Dr. Dreyer's medical
2 license in March 2021, and ultimately Dr. Dreyer's lifetime ban to practice medicine
3 in Washington State, as well as other restrictions.

4 5.48 Prior to no earlier than April 12, 2022, Mr. Summers was unaware of
5 Providence's admission of salient facts as outlined herein and in its settlement with
6 the DOJ, or that the DOH was looking into his care by Dr. Dreyer, or that the
7 procedure conducted on him by Dr. Dreyer was unnecessary or otherwise improper,
8 constituting a part of an unlawful financial scheme and resulting in substandard care.
9

10 5.49 Upon information and belief, Providence and Dr. Dreyer submitted
11 billing that falsely stated Mr. Summers' surgeries were medically necessary and
12 otherwise proper.
13

14 5.50 As a result of these unnecessary or otherwise improper surgeries, Kirk
15 Summers has suffered emotional distress, economic damage, and permanent
16 debilitating harm, including, without limitation, unhealthy weight loss; inability to
17 work (he will be applying for disability benefits); no independent income; constant
18 pain and discomfort; difficulty walking; inability to sleep, sit or stand for any period
19 of time; is on pain medication daily, and suffers from fatigue, anxiety, and
20 depression.
21

22 5.51 **STEVEN BASH**. Steven Bash, the deceased, married to CHRISTINE
23 BASH, was a patient of JASON A. DREYER, DO at Providence at SMMC.
24

1 5.52 Mr. BASH began consulting with Dr. Dreyer in 2014 after a work-
2 related injury resulted in a combination of leg/groin and back pain, with radiating
3 leg pain being greater than or equal to 75% of his symptoms.

4 5.53 Mr. BASH underwent three (3) surgeries – all conducted by Dr. Dreyer.

5 5.54 Upon information and belief, these surgeries – and, at a minimum, the
6 second and third surgeries – were negligent, medically unnecessary, or otherwise
7 improper.
8

9 5.55 Surgery 1: October 2014. Dr. JASON DREYER, DO.

10 5.55.1 Reported after the work-related injury described above. After
11 conservative care, Dr. Dreyer recommended a one-level microdiscectomy of
12 L2-L3 and a laminectomy of L3-L4.
13

14 5.55.2 Mr. Bash had concerning or disqualifying comorbidities,
15 including opioid dependence, a condition he sought to control;

16 5.55.3 Trusting Dr. Dreyer, and in reliance of his advice and stated
17 opinion, Mr. Bash agreed to the surgery.

18 5.55.4 After this surgery, upon information and belief, Mr. Bash was
19 in consistent pain, and no longer could sleep well because of the pain.
20

21 5.55.5 Upon information and belief, this surgery was the first step
22 towards subsequent surgeries; it was the start of Mr. Bash becoming one of
23 Dr. Dreyer's repeat, multiple-surgery victims; and it became a part of a pattern
24

1 and practice of Providence via its agent / employee Dr. Dreyer, to perform
2 negligent, medically unnecessary, or otherwise improper procedures for the
3 purpose of financial gain, ultimately resulting in foreseeable, permanent
4 damages described herein.

5
6 5.56 Surgery 2: January 2016. Dr. JASON DREYER, DO

7 5.56.1 Dr. Dreyer determined Mr. Bash was doing “poorly;” stated his
8 issues were “as bad, if not worse than before surgery;” and proposed an
9 extensive, radical surgery: an anterior lumbar interbody arthrodesis, L1-2, L2-
10 3, L3-4 from the lateral approach; postereolateral arthrodesis, L1-2, L2-3, L3-
11 4; combined posterior interbody and posterolateral arthorodesis, L4-5, L5-S1;
12 PEEK interbody L1-2, L2-3, L3-4, L4-5, L5-S1; posterior spinal
13 instrumentation, L1-S1; and laminectomies L1, L2, L3, L4, L5, S1 for
14 decompression, recommendation without taking steps to determine the risk
15 assessment for such an extensive surgery or to determine origins/generators
16 of Mr. Bash’s pain.

17
18 5.56.2 Mr. Bash still had concerning or disqualifying comorbidities,
19 including opioid dependence, a condition he sought to control;

20
21 5.56.3 Trusting Dr. Dreyer, and in reliance of his advice and stated
22 opinion, Mr. Bash agreed to the surgery.

23 5.56.4 Mr. Bash woke from surgery screaming and crying, in
24

1 unbearable pain.

2 5.56.5 The surgery was medically unnecessary or otherwise improper
3 and was performed for the purpose of financial gain for Dr. Dreyer and
4 Providence.
5

6 5.57 Surgery 3: August 2016. JASON DREYER, DO.

7 5.57.1 In response to Mr. Bash having pain on his right side, Dr. Dreyer
8 stated there was a broken screw on the left side of Mr. Bash's spine as a result
9 of the earlier surgery, and proposed the following surgery to remove the
10 broken screw (despite its location on the left, not right, side): posterolateral
11 arthrodesis L4-5, L5-S1; posterior spinal instrumentation L4-S1;
12 laminectomy L4, L5, S1 for the purpose of decompression.
13

14 5.57.2 Mr. Bash still had concerning or disqualifying comorbidities,
15 including opioid dependence, a condition he sought to control;
16

17 5.57.3 Trusting Dr. Dreyer, and in reliance of his advice and stated
18 opinion, Mr. Bash agreed to the surgery.

19 5.57.4 The surgery was medically unnecessary or otherwise improper
20 and was performed for the purpose of financial gain for Dr. Dreyer and
21 Providence.

22 5.58 On or about May 4, 2017, over a year after his second surgery and about
23 nine months from his third surgery, his treating physician Dr. John Hoehn
24

1 concluded:

2 This patient lives with chronic, incurable, severe pain that interferes with the
3 activities of living. Non-narcotic medications are ineffective or otherwise
4 contraindicated. Patient has accepted the risks and side effects of narcotics
5 for the benefit of improved quality of life. The patient and I know of no
6 other available safe or effective alternatives. This is not for cure, but for
7 maintenance therapy. I have seen no evidence of inappropriate or illegal use
8 of these narcotics, and am willing to permit the patient to use them on an
9 ongoing basis with my medical supervision.

10 5.59 On August 6, 2018, Mr. Bash passed away prematurely from a heart
11 attack at the age of 51. Upon information and belief, Dr. Dreyer's medically
12 unnecessary and otherwise improper surgeries contributed to Mr. Bash's premature
13 death. In fact, it is the stated belief of Mr. Bash's pain management treating
14 specialist Dr. Craig Flinders that the "post-laminectomy pain syndrome thoracic and
15 lumbosacral neuritis" resulted in the need for ongoing opioid medications which
16 "definitely result[ed] in hypogonadism" from which Mr. Bash "suffered terribly;"
17 that Mr. Bash was under "tremendous amount of stress due to the pain which
18 contributed to his severe insomnia;" and that these all were "certainly major
19 contributing factors which ultimately contributed to his heart disease and eventually
20 resulted in his death."

21 5.60 Prior to no earlier than April 12, 2022, Ms. Bash, individually and as
22 personal representative, was unaware of Providence's admission of salient facts as
23 outlined herein and in its settlement with the DOJ, or that the DOH was looking into

1 his care by Dr. Dreyer, or that the procedure conducted on him by Dr. Dreyer was
2 unnecessary or otherwise improper, constituting substandard care.

3 5.61 Upon information and belief, Providence and Dr. Dreyer submitted
4 billing that falsely stated Mr. Bash's surgeries were medically necessary and
5 otherwise proper.
6

7 5.62 As a result of these unnecessary or otherwise improper surgeries,
8 Steven Bash suffered emotional damage, economic loss, permanent debilitating
9 harm, and death.

10 **MULTICARE HEALTH SYSTEM PLAINTIFFS**

11 5.63 All surgery patients of Dr. Dreyer at MultiCare Health System are
12 proposed class members, whether or not they also were victims of unnecessary
13 surgeries. This is so because Providence failed to report Dr. Dreyer, actively
14 concealing Dr. Dreyer's role in the profiteering financial scheme, improperly
15 allowing Dreyer to conduct surgeries at MultiCare after Providence when he should
16 have been reported and unhireable, which makes all those surgeries improper.
17

18 5.64 In addition to the named plaintiffs below (Mr. Sumerlin and Mr.
19 Whitney), the Plaintiffs have notified the Court of about 30 MultiCare patients,
20 currently unnamed per Court order, *see* ECF 223:7, who are listed in the stricken
21 Fourth Amended Complaint currently filed under seal, ECF 189.
22

23 5.65 These additional MultiCare patients are currently putative class
24

1 members, as are all of Dr. Dreyer's MultiCare surgical patients who have yet to
2 receive notice and come forward.

3 5.66 Neurosurgical medical experts have been reviewing, and will continue
4 to review, medical files of Dr. Dreyer's MultiCare patients. From this review thus
5 far, Plaintiffs' experts have identified multiple patients, including all named
6 Plaintiffs, as having undergone medically unnecessary or otherwise improper
7 surgeries at MultiCare that fit the pattern, and are typical of, the pattern contained
8 within the 2022 SA, ¶ D (Exhibit 2) and the patterns identified by Dr. David Yam
9 (*see e.g.*, Exhibit 6), all of which is supported by credible evidence that these were
10 repeated patterns affecting hundreds of patients and potentially greater than 80
11 percent of Dr. Dreyer's surgical patients. (¶¶1.15-1.19 & 4.62-4.69). Further, the
12 DOJ's January 2024 MultiCare *qui tam* complaint alleges that MultiCare submitted
13 dozens, if not hundreds, of materially false and fraudulent claims for Dr. Dreyer's
14 services. *See* MultiCare *qui tam* complaint at ¶ 6 (link at ¶ 1.2, *supra*).
15
16

17 5.67 **RAYMOND SUMERLIN JR.** now 60 years old, married to Plaintiff
18 MARYANN SUMMERLIN, three surgeries by Dr. Dreyer: Surgery dates: January
19 20, 2020 and January 22, 2020 (in tandem); September 28, 2020.
20

21 5.68 Surgery 1 and 2 (in tandem): January 20 and 22, 2020. Dr. JASON
22 DREYER, DO.

23 5.68.1 Reported neck and arm pain on January 19, 2020, after an earlier
24

1 2019 surgery by a former MultiCare neurosurgeon, Brent Morgan. Dr. Dreyer
2 showed Mr. Sumerlin an isolated place on his images as causing the issue and
3 proposed surgery the next day, without discussing conservative care options
4 and despite no emergent situation.

5
6 5.68.2 Mr. Sumerlin had concerning or disqualifying comorbidities;

7 5.68.3 Trusting Dr. Dreyer, and in reliance of his advice and stated
8 opinion, Mr. Sumerlin agreed to what he believed would be a necessary but
9 simple surgery.

10 5.68.4 After the consultation, as MARYANN SUMERLIN and the
11 PA-C were exiting the room, Dr. Dreyer asked to speak to Mr. Sumerlin
12 privately. He firmly told Mr. Sumerlin that there were more problems with his
13 spine and that he, Dr. Dreyer, wanted to take care of them now so that Mr.
14 Sumerlin would not have to return. Mr. Sumerlin believed he had to do the
15 surgery because Dr. Dreyer was so firm about it. Dr. Dreyer did not inform
16 Mr. Sumerlin that this additional surgery would result in the fusion of six
17 levels, C3 through T1, both anterior and posterior. Dr. Dreyer did not discuss
18 conservative care options and proposed surgery the next day despite the fact
19 there was no emergent situation requiring immediate surgery.

20
21
22 5.68.5 Trusting Dr. Dreyer, and in reliance of his advice and stated
23 opinion, Mr. Sumerlin agreed to the surgery.

1 5.68.6 Mr. Sumerlin's cervical surgery took place on January 20, 2020.
2 It was a five-hour surgery, anterior only. According to operating room notes,
3 the O-Arm (a mechanical device used by Dr. Dreyer in surgeries)
4 malfunctioned and Dr. Dreyer ultimately halted the surgery midway through,
5 accomplishing the anterior portion of the surgery only. This long surgery put
6 Mr. Sumerlin at greater risk for infection.
7

8 5.68.7 Mr. Sumerlin's cervical surgery continued on January 22, 2020,
9 to accomplish the posterior portion of the surgery, again putting Mr. Sumerlin
10 at greater risk for infection.
11

12 5.68.8 The surgeries were medically unnecessary or otherwise improper
13 and were performed for the purpose of financial gain for, *inter alia*, Dr.
14 Dreyer.
15

16 5.69 After surgery, for months, Mr. Sumerlin had significant seepage and
17 draining coming from the wound on his neck that did not heal and for which Dr.
18 Dreyer treated improperly including by failing to obtain a formal infectious disease
19 referral which would have resulted in proper cultures being taken and Mr. Sumerlin
20 would have been diagnosed at an earlier stage as having the highly dangerous
21 MRSA¹⁹ (which he had).
22

23 ¹⁹ MRSA stands for Methicillin-resistant staphylococcus aureus. Left untreated, MRSA
24 infections can become severe and cause sepsis.

1 5.70 Instead, Dr. Dreyer attempted debridements and treated what he called
2 a “seroma” (accumulation of fluid under the skin) with antibiotics (even though
3 seromas are generally not treated that way) and he also prescribed Keflex (which is
4 not effective against MRSA). Dr. Dreyer’s treatment of Mr. Sumerlin’s infection fell
5 below the standard of care. Mr. Sumerlin’s wound continued not to heal.
6

7 5.71 Surgery 3: On September 28, 2020, Mr. Sumerlin was finally diagnosed
8 with MRSA, and this was done in a clinic in Walla Walla, Washington, where he
9 lived, upon Mr. Sumerlin’s insistence, and not by Dr. Dreyer. The failure to follow
10 proper infectious disease care protocols and obtain cultures of the wound, resulted
11 in the late diagnosis which more likely than not resulted in a greater infection that
12 was left to fester and grow all summer.
13

14 5.72 Upon the MRSA diagnosis, Mr. Sumerlin returned immediately to
15 Spokane (since he located no surgeon in Walla Walla who was willing to take on
16 treating the MRSA infection in his spine) and Dr. Dreyer again performed surgery
17 to remove the infected issue/ MRSA, thereby removing a large chunk of Mr.
18 Sumerlin’s neck and vertebrae in the process.
19

20 5.73 Upon information and belief, these medically unnecessary or otherwise
21 improper procedures more likely than not were a proximate cause of a MRSA
22 infection subsequently suffered by Mr. Sumerlin (as described above) and further,
23 that the MRSA infection went undiagnosed and untreated for months due to Dr.
24

1 Dreyer's improper actions and inactions.

2 5.74 Prior to no earlier than April 12, 2022, Mr. Sumerlin was unaware of
3 Providence's admission of salient facts as outlined herein and in its settlement with
4 the DOJ, including that it failed to report Dr. Dreyer to the DOH or the NPDB.
5

6 5.75 Upon information and belief, on a more likely than not basis, Mr.
7 SUMERLIN has suffered emotional distress, economic damage, and debilitating
8 harm due to the actions and inactions of Dr. Dreyer and Providence which is
9 permanent and irreversible, including, without limitation, a permanent great divot in
10 the back of his neck from the MRSA surgery, causing daily pain; ongoing, extreme
11 neck pain, like a vice, with little to no mobility; difficulty with choking, swallowing,
12 phlegm, and constant nose drains; is on pain medication daily, and suffers from
13 fatigue, anxiety, and depression.
14

15 5.76 MARTIN WHITNEY. Plaintiff MARTIN WHITNEY, 73 years old,
16 married to Plaintiff SHERRYL WHITNEY. Three surgeries: August 28, 2019,
17 February 24, 2020, and July 20, 2020;
18

19 5.77 Surgery 1. August 28, 2019. JASON DREYER, DO.

20 5.77.1 Reported with need for repair of previous lumbar surgery (L5-
21 S1). Dr. Dreyer informed Mr. Whitney that he could redo the surgery done
22 and heal Mr. Whitney within six months.

23 5.77.2 Mr. Whitney had concerning or disqualifying comorbidities;
24

1 5.77.3 Trusting Dr. Dreyer, and in reliance of his advice and stated
2 opinion, Mr. Whitney repair surgery.

3 5.77.4 At surgery, Dr. Dreyer redid Dr. Morgan's original surgery
4 removing all the hardware, but then conducted a fusion that was both anterior
5 and posterior for Levels L3 through S1, even though only L5-S1 was the
6 concerning level. The extent of hardware removed and the further hardware
7 placement both anterior and posterior were not necessary. This resulted in an
8 extensive surgery that was not fully indicated.
9

10 5.77.5 After this August 28, 2019, surgery by Dr. Dreyer, Mr.
11 Whitney's condition worsened, although he was still able to do some activities
12 occasionally, like driving a tractor, hunting, and fishing.
13

14 5.77.6 The surgery was medically unnecessary or otherwise improper
15 as notated above, and was performed for the purpose of financial gain for,
16 *inter alia*, Dr. Dreyer.

17 5.78 Surgery 2. February 24, 2020. JASON DREYER, DO.

18 5.78.1 Dr. Dreyer informed the Whitney's that he could fix the issues
19 that arose with this 8/28/2019 surgery (Dr. Dreyer's first surgery).
20

21 5.78.2 Mr. Whitney still had concerning or disqualifying
22 comorbidities;

23 5.78.3 Trusting Dr. Dreyer, and in reliance of his advice and stated
24

1 opinion, Mr. Whitney agreed to a second surgery by Dr. Dreyer on February
2 24, 2020.

3 5.78.4 On or about February 24, 2020, Dr. Dreyer again removed and
4 replaced screws and also decompressed L2-L3 with plate placement at L2-L3,
5 even though the imaging did not indicate a need for removal and replacement
6 of hardware/screws, nor a need for L2-L3 decompression with plate
7 placement.
8

9 5.78.5 After this second surgery by Dr. Dreyer on 2/24/2020, Mr.
10 Whitney was mostly bedridden, though he could still drive himself to
11 appointments.
12

13 5.78.6 The surgery was medically unnecessary or otherwise improper,
14 and was performed for the purpose of financial gain for, *inter alia*, Dr. Dreyer
15 5.79 Surgery 3. July 20, 2020. JASON DREYER, DO.

16 5.79.1 On or about July 20, 2020, Dr. Dreyer recommended and
17 performed his third surgery to remove the L2-L3 plate/hardware that he had
18 placed unnecessarily during the February 24, 2020, surgery.
19

20 5.79.2 Mr. Whitney still had concerning or disqualifying
21 comorbidities;

22 5.79.3 Trusting Dr. Dreyer, and in reliance of his advice and stated
23 opinion, Mr. Whitney agreed to this third surgery by Dr. Dreyer on July 20,
24

1 2020.

2 5.79.4 After the July 20, 2020 surgery by Dr. Dreyer, Mr. Whitney was
3 bedridden and could not even drive himself to appointments.

4 5.79.5 The surgery was medically unnecessary or otherwise improper
5 and was performed for the purpose of financial gain for, *inter alia*, Dr. Dreyer.
6

7 5.80 Prior to no earlier than April 12, 2022, Mr. Whitney was unaware of
8 Providence's admission of salient facts as outlined herein and in its settlement with
9 the DOJ, including that it failed to report Dr. Dreyer to the DOH or the NPDB.

10 5.81 Upon information and belief, on a more likely than not basis, Mr.
11 WHITNEY Mr. has suffered emotional distress, economic damage, and debilitating
12 harm due to the actions and inactions of Dr. Dreyer and Providence which is
13 permanent and irreversible, including, without limitation, he is primarily bedridden;
14 he walks with a cane or uses a scooter; he no longer engage in any hobbies such as
15 hunting, fishing, repairing vehicles or use of his tractor; is on pain medication daily,
16 and suffers from fatigue, anxiety, and depression.
17

18 VI. MAINTENANCE OF THE CLASS

19 6.1. Plaintiffs, on behalf of themselves and those similarly situated, reallege
20 and incorporate by reference paragraphs 1.1 through 5.81 as if fully set forth herein.
21

22 6.2. Plaintiffs allege that the Defendants committed profiteering, deceptive
23 consumer practices, fiduciary violations, or the other torts alleged herein, in a course
24

1 of common conduct causing injury to Plaintiffs for which Washington common and
2 statutory law provide remedies. *Reserve v. Meta Platforms, Inc.*, 96 F.4th 1223,
3 1235 (9th Cir. 2024). Providence described the class, based upon the prior complaint,
4 and for purposes of giving patient notices (ECF 111, ¶ 5), to include all surgeries by
5 the Doctors. For example, Providence stated early on that, by this class action,
6 Plaintiffs were “putting at issue—all surgeries performed by these doctors” because
7 it alleged that “such unnecessary or improper procedures were ‘part of a pattern and
8 practice,’ thus potentially calling into question” all surgeries performed by the
9 Doctors. (ECF 42:7)
10

11
12 6.3. This was true also of Plaintiffs’ MultiCare Health System class
13 definition; Providence did not take proper action; it failed to report Dreyer to the
14 authorities and instead concealed their acts to the benefit of Providence and for all
15 Defendants’ financial gain. No surgery should have occurred at MultiCare, making
16 all Dreyer surgeries at MultiCare “improper” surgeries for which Providence is
17 liable due to its negligent and deliberate acts.

18
19 6.4. Plaintiffs identify the two classes: one for Providence patients and one
20 for MultiCare patients, and the classes both include all surgery patients of the
21 Doctors as stated below.

22 **6.5. Patient Class Definitions:**

23 6.5.1. **Providence Class.** Plaintiffs bring this Class action pursuant to
24

1 Washington CR 23(b)(2), (b)(3), and (c)(4)²⁰ on behalf of the Providence
2 Class defined as follows: *All surgical patients of the Doctors at Providence*
3 *who were subject to the RVU compensation scheme in connection with their*
4 *treatment.*

5
6 6.5.2. **MultiCare Class.** Plaintiffs bring this Class action pursuant to
7 Washington CR 23(b)(2), (b)(3) and (c)(4) on behalf of the MultiCare Class
8 defined as follows: *All surgical patients of Dr. JASON A. DREYER, DO while*
9 *he was employed in Spokane, Washington by MultiCare Health Systems, from*
10 *May 3, 2019 through November 18, 2021.*

11
12 6.5.3. Plaintiffs reserve the right to modify or amend the definitions of
13 the proposed Classes and/or to add Subclasses if necessary before the Court
14 determines whether certification is appropriate and as the Court may
15 otherwise allow, including a subclass of vulnerable adults and/or for estates
16 and/or for survival actions (claims already preserved herein).

17 **Rule 23 Factors**

18
19 6.6. **Numerosity/Providence Class:** All surgical patients of the Doctors
20 are included in the proposed class. Providence has identified that the Doctors had

21
22
23 ²⁰ Reference to Washington Rule 23 should include reference to Fed. R. Civ. P. 23; rules are
24 similar and applicable.

1 1,750 surgical patients at Providence. ***Thus, there are at least 1,750 class members.***
2 ECF110:2. These patient numbers are the product of the system created by
3 Providence to issue notices to prospective class members for purposes of this case,
4 and its billing records are an accurate source of this information. Therefore,
5 Providence class membership is readily identifiable, including by Providence, which
6 has already identified the class members. Furthermore, the Plaintiffs named herein,
7 combined with the other Providence patients (currently unnamed per Court order,
8 see ECF 223:7, who are listed in the stricken Fourth Amended Complaint currently
9 filed under seal, ECF 189) exceeds 40 patients for the Providence patient class.
10 These additional individuals are currently putative class members, as are all the
11 Doctors' Providence patients who have yet to receive notice and come forward.
12

13
14 6.6.1. A substantial majority of each of the foregoing patient classes is
15 comprised of residents of the state of Washington; their principal injuries
16 occurred within the state of Washington; their claims are based upon
17 Washington state law, and at least one defendant is a citizen of Washington.
18

19 6.6.2. The DOJ and Dr. Fewel identified "hundreds of patients" as
20 affected, and Dr. Yam has identified the potential for over 80 percent of
21 patients being affected. In addition, all surgical patients of Defendants at
22 Providence, ***which number about 1,750 patients***, are class members. The
23 Providence Class is so numerous that joinder of all members is impracticable.
24

Moreover, Plaintiffs cannot identify prospective members of the Providence Class without the assistance of Providence and/or other Defendants due to the fact that specifics are known only to them and are not public due to HIPAA restrictions, which prohibits investigation to determine what patients have claims

6.7. **Numerosity/MultiCare Class.** All surgical patients of Dr. Dreyer at MultiCare are included in the proposed MultiCare class. It has been identified that Dreyer had at least 475 surgical patients at MultiCare. ECF:110:2. These patient numbers are the product of the system created by Providence to issue notices to prospective MultiCare class members for purposes of this case. Therefore, MultiCare class membership is readily identifiable, including by Providence, which has already identified class members. *Thus, there are at least 475 class members.* Further, the Plaintiffs named herein, combined with the other known MultiCare patients (currently unnamed per Court order, see ECF 223:7, who are listed in the stricken Fourth Amended Complaint currently filed under seal, ECF 189) thus far totals about 30 known Dr. Dreyer patients for the MultiCare patient class. These additional individuals are currently putative class members, as are all of Dr. Dreyer's MultiCare patients who have yet to receive notice and come forward.

6.7.1. A substantial majority of each of the foregoing patient class is comprised of residents of the state of Washington; their injuries occurred

1 within the state of Washington; their claims are based upon Washington
2 state law, and at least one defendant is a citizen of Washington.

3 6.7.2. The MultiCare Class is so numerous that joinder of all members is
4 impracticable. Moreover, Plaintiffs cannot identify prospective members
5 of the MultiCare Class without the assistance of MultiCare and/or
6 Providence and/or other Defendants due to the fact that specifics are
7 known only to them and are not public due to HIPAA restrictions, which
8 prohibits investigation to determine what patients have claims.
9

10 6.8. **Commonality:** This action involves common questions of law and fact
11 which predominate over any questions affecting individual Class members, and
12 which justify damages relief under Rule 23(b)(3), equitable relief under Rule
13 23(b)(2), and the resolution of particular issues under Rule 23(c)(4), including the
14 common issues and proof alleged in Section IV *supra*, which is incorporated herein.
15 Details of these common issues of law, fact, claim, and remedies are also listed in
16 Exhibit 9, and are incorporated herein, and include, without limitation:
17

18 6.8.1. Whether Defendants have engaged in criminal profiteering
19 activity via multiple predicate acts of criminal profiteering under
20 9A.82.010(4), for financial gain actionable under RCW 9A.82.100 (Criminal
21 Profiteering) or RCW 9A.82.080 (Use of Proceeds of Criminal Profiteering),
22 including in connection with money laundering of the proceeds of specified
23
24

1 unlawful activity under RCW 9A.08.020 and RCW 9A.08.030, including but
2 not limited to hundreds of:

- 3 • False health care claims as defined in RCW 48.80.030 (RCW
4 9A.82.010(hh)), as quoted in ¶ 4.2ii *supra*; false health care claims
5 as defined in 18 U.S.C. §§ 1347 & 1349, and false claims as defined
6 in 18 U.S.C. § 287, including liability under 18 U.S.C. § 2;
- 7 • Money laundering offenses as defined in RCW 9A.83.020 (RCW
8 9A.82.010(t)), including conducting a financial transaction
9 involving the proceeds of criminal profiteering activity as defined
10 by RCW 9A.82.010(7), or knowing the transaction is designed to
11 conceal the nature of the proceeds of specified unlawful activity, or
12 knowingly or recklessly acts as to whether the property is unlawful
13 proceeds, including:
 - 14 ○ false health care claims (9A.82.010(4)(hh) (citing 48.80.030),
15 knowing the property is proceeds of this specified unlawful
16 activity (83.020(1)(a)), of false health care claims (83.010(4);
 - 17 ○ theft by deception as defined/applied in RCW 9A.56 (RCW
18 9A.82.010(e)), including the intentional use of a common
19 scheme or plan of deception to deprive plaintiffs of their
20 property or services, including earned entitlement to health
21 care benefits and to payments of \$250 or more; and
 - 22 ○ federal *specified* unlawful activity under 9A.83.010(7),
23 including violations of 18 U.S.C. § 1347, 1349, 18 U.S.C. §
24 287, 18 U.S.C. §§ 1956(a) and 1957(a) involving a Federal
health care offense under 18 U.S.C. § 24(a), and aiding and
abetting liability under 18 U.S.C. § 2.

6.8.2. Whether Defendants' profiteering activity via these multiple
predicate acts demonstrates a "pattern" of profiteering activity, as defined in
RCW 9A.82.010(12), in connection with the violations of RCW 9A.82.100
and RCW 9A.08.020 and RCW 9A.08.030, including:

- Actions taken having the same/similar intent – the intent was to achieve and/or maintain financial gain, and the pattern of actions taken include, *e.g.*:
 - submitting hundreds of false health care claims;
 - accepting hundreds of payments for those claims;
 - concealing Defendants’ unlawful actions taken to obtain these funds, including failing to disclose that the hundreds of medical necessity certifications provided by Defendants were false;
 - failing to repay any of the funds received; and
 - failing to report the neurosurgeons to NPDB or DOH as required by law (which would have resulted in disgorgement of funds received) and affirmatively using the threat of such reporting to secure the cooperation of the Doctors in concealing the false claims and unlawful proceeds;
- Actions taken have the same or similar outcome / result; here the result was to keep the funds obtained and conceal the bad acts of neurosurgeons (by, *inter alia*, failing to return funds or report them to NPDB or DOH), which resulted in continued and perpetual harm to unsuspecting past and future patients;
 - Same or similar accomplices – here, the Defendants;
 - Same or similar principals – here, the Defendants;
 - Same or similar victims – here, unsuspecting and trusting individuals in need of specialized and honest health care treatment;
 - Same or similar methods of commission – here, the same pattern and practice repeated itself for the entire relevant time period(s) consistently and throughout;
 - Otherwise interrelated by distinguishing characteristics, including nexus to the same enterprise – here, (1) one distinguishing characteristic includes a requirement in the

1 medical profession, when seeking insurance reimbursement
2 or coverage, to verify under penalties (including license
3 revocation penalties) that the proposed medical procedures
4 are medically necessary or are otherwise proper; and (2) The
5 enterprises to which the “nexus” exists, see RCW
6 9A.82.010(8), are governmental health care payee entities
7 like, *inter alia*, Medicare/Medicaid (which require the above-
described assurances), and/or the health care insurance
industry, including private insurance companies (which also
require such assurances), or Providence or Providence St.
Joseph Health, or the association-in-fact of both;

8 6.8.3. Whether Providence is liable for the Doctors’ false claims
9 because it was committed by the conduct of another person for which
10 Providence was legally accountable, including as an accomplice. *See* RCW
11 9A.08.020 and RCW 9A.08.030.

12 6.8.4. Whether Providence provided substantial assistance to the
13 Doctors in presenting their false claims to health insurers, or otherwise is
14 liable for conduct as an accomplice or aider and abetter.
15

16 6.8.5. Whether Defendants’ scheme to induce, to commit and to
17 conceal the presentation of false health care claims to health benefit program
18 insurers constitutes health care fraud, in violation of RCW 48.80.030, 18
19 U.S.C. § 1347 or 18 U.S.C. § 287, including as proscribed by 18 U.S.C. § 2
20 or RCW 9A.08.020 and RCW 9A.08.030.
21

22 6.8.6. Whether Defendants’ scheme to commit and to conceal the
23 presentation of false health care claims to health benefit program insurers
24

1 constitutes health care fraud, in violation of RCW 48.80.030, 18 U.S.C. §
2 1347, or 18 U.S.C. § 287, including as proscribed by RCW 9A.08.020 and
3 RCW 9A.08.030 or 18 U.S.C. § 2.

4 6.8.7. Whether Defendants' pattern of criminal profiteering activity
5 was discovered for purposes of the statute of limitations under RCW
6 9A.82.100(7) (profiteering) no earlier than April 12, 2022 (the date the
7 Defendants first admitted publicly a pattern existed, requiring a \$22.7 million
8 settlement), but Providence took affirmative steps thereafter to conceal this,
9 including by publishing a newspaper communication to its patients attempting
10 to isolate the misconduct to the Doctors and falsely suggesting that
11 Providence's "thorough investigation" discovered and removed them from
12 their jobs;
13
14

15 6.8.8. Whether Defendants' failure (Providence's failure in particular)
16 to report the malfeasance of the neurosurgeons, including under RCW
17 70.41.210, was a violation of a statutory or common law duty to Plaintiffs
18 resulting in general/special damages;
19

20 6.8.9. Whether the settlement between DOJ and Providence of
21 \$22,690,458 (with \$10,459,388 designated as restitution) creates a
22 mechanism by which financial damages for medical costs can be measured
23 for all Plaintiffs (and/or for the Settlement Class Plaintiffs), including as
24

1 calculated pursuant to the resulting Providence Corporate Integrity
2 Agreement and reports thereunder, and in equitable remedies including
3 restitution, disgorgement, and forfeiture;

4 6.8.10. Whether Providence owed a common law, statutory,
5 and/or nondelegable duty of care to all patients to report the actions of the
6 neurosurgeons pursuant to, *inter alia*, RCW 70.41.210, resulting in actionable
7 lawsuits by all Plaintiffs against Providence for failure to comply with that
8 statutory duty, resulting in reasonably foreseeable general/special damages;

9 6.8.11. Whether Providence breached its duty to comply with the
10 standard of care of a hospital or the applicable government standard of care
11 for claims;

12 6.8.12. Whether Defendants exercised the requisite degree of
13 skill, care and learning expected of a reasonably prudent hospital/healthcare
14 provider;

15 6.8.13. Whether Defendants fell below their professional standard
16 of care;

17 6.8.14. Whether Defendants failed to obtain consent/informed
18 consent that surgery would not occur in a safe environment and that it included
19 medically unnecessary or otherwise improper procedures;

20 6.8.15. Whether Defendants violated the Consumer Protection
21
22
23
24

1 Act (RCW 19.86);

2 6.8.16. Whether Defendants violated the Criminal Profiteering
3 Act (RCW 9A.82.100 and Use of Criminal Profiteering Proceeds Act
4 (9A.82.080)) in connection with violations of RCW 9A.08.020 and RCW
5 9A.08.030;

6
7 6.8.17. Whether Defendants concealed evidence forming the basis
8 of this action from its patients, from MultiCare patients, and from the public
9 during the relevant time period until no sooner than April, 2022;

10 6.8.18. Whether nonmonetary relief is required to compensate
11 Class members, including disgorgement, forfeiture, restitution, divestment,
12 injunctions, and civil penalties that are appropriate to be brought or
13 maintained as a class action under Rule 23(b)(2),
14

15 6.8.19. The nature and extent of Class-wide injury and the
16 measure of compensation for such injury.

17 6.8.20. The aforementioned common issues present particular
18 questions appropriate to be brought or maintained as a class action under Rule
19 23(c)(4). In particular, the following issues are suitable for class management
20 and thereby materially advance the resolution of this case, including:
21

22 Whether Providence performed, or failed to perform, on an ongoing
23 basis, proper background, credentialing, privileging, supervision and
24 performance review of the Doctors.

1
2 Whether Providence failed to take any timely action to supervise,
3 prevent, or discipline the Doctors' misconduct, including by
4 continuing to file false health care claims to promote and to conceal
5 such misconduct, and by failing to create or to maintain any system to
6 detect and prevent such false claims.

7 Whether Plaintiffs' and Class Members' increased risk of exposure to
8 a pattern of associated false claim billing, was caused either by
9 Providence's negligence or by Providence's deliberate action.

10 Whether Providence is liable for the Doctors' false claims because it
11 was committed by the conduct of another person for which
12 Providence was legally accountable, including as an accomplice. See
13 RCW 9A.08.020 and RCW 9A.08.030.

14 Whether Providence provided substantial assistance to the Doctors in
15 presenting their false claims to health insurers.

16 Whether Providence used appropriate standard of care practices to
17 hire the Doctors and their affiliated supervisors and subordinates to
18 monitor and supervise the Doctors' activity, including their use,
19 dependence upon, and misuse of Providence's wRVU incentive
20 bonuses.

21 Whether Providence timely detected the Doctors' misconduct in
22 conducting high numbers of medically unnecessary or otherwise
23 improper surgeries and the danger that they posed to patients at the
24 hospital, and/or whether Providence knew, or should have known, of
that danger but continued to incentivize the behavior despite
professionally known and obvious risks to patients.

Whether Providence intended the unlawful consequences of the
Doctors' actions, and implemented them for its financial gain.

Whether Defendants violated their fiduciary duties and responsibilities.

Whether all Defendants engaged in a pattern of criminal profiteering activity through false claims, money laundering and theft by deception.

Whether the pattern of false claims was caused by Providence's RVU compensation plan designed, supervised, implemented by Providence for its profit, and for purposes of incentivizing the commission of false claims by the Doctors.

Whether the Defendants knew that the proceeds of the submitted false claims were unlawful proceeds and engaged in financial transactions with them.

Whether the criminal profiteering unlawful proceeds which were invested by the Defendants in the operation of the Enterprise(s) or were used to conceal and to promote their pattern of false claims profiteering activity.

Whether Defendants' misconduct, misrepresentations, material nondisclosures, and concealment, including through Dr. Sandquist, improperly resulted in Dr. Dreyer being hired by MultiCare.

6.9. **Typicality:** Class Plaintiffs' claims are typical of the claims of other members of the Class and Class Plaintiffs are not subject to any atypical claims or defenses. Their "typicality" includes (a) they were surgical patients of the Doctors, qualifying them as a potential class member based on that status alone; (b) the manner in which their surgeries were conducted, which follow the pattern listed in

1 Recital D of the SA (a pattern which is supported by the evidence to include
2 “hundreds” of patients); (c) Defendants submitted false billings in connection with
3 their surgeries; (d) they were not informed their surgeries would be conducted by
4 surgeons performing high numbers of medically unnecessary or otherwise improper
5 surgeries, resulting in a lack of informed consent (details of this typical claim are
6 outlined in ¶ 4.152); (e) each of their surgeries was done with intent to commit a
7 felony (*e.g.*, health care fraud, theft by deception, and/or money laundering), either
8 by, *e.g.*, submission of false billing to insurance companies and/or to cover up the
9 financial scheme to submit false billings; (f) each relied to their detriment on
10 Providence’s self-promoted reputation for providing proper and safe health care to
11 patients; (g) Defendants owed a fiduciary duty, and other duties, including
12 nondelegable duties, to each of the Providence plaintiffs (just as were owed to the
13 entire proposed class), and also owed a duty to each of the MultiCare plaintiffs (just
14 as were owed to the entire proposed class); and (h) they each suffered typical
15 damages, *e.g.*, that of emotional, economic, and physical damage.
16
17
18

19 6.10. In sum, the named Plaintiffs, and the proposed class members, have the
20 same or similar injuries based upon conduct that is not unique to the named
21 Plaintiffs, and the proposed class members have been injured by the same course
22 conduct as the named Plaintiffs as articulated herein. The purpose of the wRVU
23 scheme was to treat each class member the same under the wRVU scheme so as to
24

1 maximize the financial benefits falsely accruing to the Defendants to the prejudice
2 and harm of the class members.

3 6.11. To further this fraudulent scheme, Defendants concealed their
4 wrongdoing by *e.g.*, (a) failing to reimburse the enterprise health care industry and/or
5 Medicare/Medicaid for payments for procedures that did not meet criteria for
6 reimbursement, were medically unnecessary, or were otherwise improper; (b) failing
7 to report the neurosurgeons to the NPBD or the DOH (which would have resulted in
8 disgorgement), to any health care organization, to Dr. Dreyer's prospective
9 employers, or to their patients; and (c) receiving, commingling, and distributing the
10 proceeds of criminal profiteering activity. Defendants fraudulently induced patients
11 to submit to surgery through material misrepresentations and omissions, including
12 certifications of medical necessity, and failed to advise Plaintiffs of the medically
13 unnecessary surgeries and otherwise improper procedures to which they were
14 subjected, before or after their surgeries, and after the April 2022 SA. Defendants
15 took repeated, similar actions as outlined in the commonality section, to which
16 Providence has admitted. Plaintiffs received the same notice, *i.e.*, no sooner than the
17 public announcement of the DOJ Settlement on April 12, 2022. Plaintiffs were all
18 victims of a scheme of Defendants involving similar medically unnecessary or
19 otherwise improper procedures, all of which went unabated due to Defendants'
20 actions, negligence and concealment. Providence thereafter disavowed its own
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1 responsibility by communicating with its patients through a newspaper
2 communication on June 5, 2022 that the only problem was two unidentified doctors
3 whose conduct it allegedly discovered and took action upon to cause them to leave.
4 The named Plaintiffs' claims, like those of the Class, arise out of the same common
5 course of conduct by Defendant directed toward them and the Class and are based
6 on the same legal and remedial theories.
7

8 6.12. **Adequacy:** Class Plaintiffs will fairly and adequately represent the
9 Class, as they are committed to prosecuting this action, have no conflicts of interest,
10 and have retained competent counsel who are experienced civil trial lawyers with
11 significant experience in complex litigation and trial, including tort and class action
12 litigation. Plaintiffs have no conflicts because none have any financial or other
13 relationship with Defendants that would give them an interest in Defendants
14 prevailing in this action. Plaintiffs and their counsel are committed to prosecuting
15 this action vigorously on behalf of the Class(es) and have the financial resources to
16 do so. Plaintiffs' counsel Langrock is a founding partner of Langrock, Sperry &
17 Wool, and has prosecuted class actions in several states, including arguing two class
18 actions before the Supreme Court: *Zahn v. International Paper*, 414 U.S. 291 (1973)
19 and *International Paper Co v. Ouelette*, 479 U.S. 481 (1987). Mr. Langrock has been
20 a member of the American Law Institute, and a Uniform Law Commissioner, for
21 more than fifty years. Plaintiffs' counsel Reed has experience as lead counsel in class
22
23
24

1 actions and has experience prosecuting and defending cases under the Racketeer
2 Influenced and Corrupt Organization Act. Plaintiffs' counsel at the Gilbert Law firm
3 has class action experience and extensive experience in medical tort and related tort
4 law. Neither Plaintiffs nor their counsel have interests that are contrary to or that
5 conflict with those of the proposed Class, including that no Plaintiff is in individual
6 settlement negotiations with the Defendants. Defendants have not alleged such
7 conflicts of interest for any Plaintiff. Any such allegation can be, and will be, refuted
8 as necessary in the scheduled class certification proceedings.
9

10 6.13. **Predominance:** The common issues predominate over any
11 individualized issues. The commonalities are articulated in detail in Section IV,
12 *supra*, with some of those commonalities summarized below to exemplify how they
13 predominate over any individual question of law or fact.
14

15 6.14. Adjudication of these common issues in a single action has important
16 and desirable advantages of judicial economy. The predominant legal and factual
17 issues are described in the itemization of the essential elements of each claim *infra*,
18 including as to causation, and the common proof and predominant factual issues
19 which are described in ¶¶ 4.1 *infra*; along with the common proof which proves
20 them, which are incorporated herein.
21

22 6.15. **Predominance/Providence Class.** The common issues which
23 predominate the Providence class include:
24

- Whether Defendants’ fraudulent material misrepresentations and omissions causing the legal claims by plaintiffs herein can be established by common proof, including:
 - Whether Defendants violated their fiduciary duties (*i.e.*, duty of care, candor, and loyalty to patients, exercising the utmost good faith and loyalty in dealing with them), thus eliminating any burden to establish individual reliance, making causation provable on a classwide basis and thus meeting predominance;²¹
 - Whether Defendants’ fiduciary duty to Plaintiffs creates a presumption of reliance or justified common sense inference of reliance, also eliminating any burden to establish individual reliance, especially given that Defendants violated this duty by failing to disclose their scheme;²²
 - Whether the materiality of Defendants’ misrepresentations and omissions can establish class reliance upon them because reasonable persons would not submit to surgery for purposes of creating false claims, beginning with the legal requirement that providers certify the necessity of medical care and the truth of the claims presented, and is further supported by (i) the false claims standard; (ii) the fiduciary context governing this process; (iii) the government medical standards of patient safety, *e.g.*, the two *qui tam* complaints; and (iv) the prosecution of the *qui tam* action against Providence leading to payment of \$10 million in “restitution.”²³
 - Whether Defendants’ actions and inactions create a presumption of

²¹ See *Waldrup v. Countrywide Financial Corporation*, 2018 WL 799156 (C.D. Cal. Feb. 6, 2018); *In re Morning Song Bird Food Litigation*, 320 F.R.D. 540,555 (S.D. Cal. 2017); *Walden v. Bank of New York*, 2024 WL 1556937, *14 (W.D. Pa. April 10, 2024)(fiduciary duty establishes reliance “as a matter of law”); *Seplow v. Closing Pro, Inc.*, 717 F.Supp.3d 427, 437 (E.D. Pa. 2024); *Wolfe v. Allstate*, 2011 WL 13160292, *3 (M.D. Pa. Jan. 10, 2011).

²² See *Waldrup v. Countrywide Financial Corporation*, 2018 WL 799156 (C.D. Cal. Feb. 6, 2018); *In re Morning Song Bird Food Litigation*, 320 F.R.D. 540,555 (S.D. Cal. 2017).

²³ *Lytle v. Nutramax Laboratories, Inc.*, 114 F.4th 1011, 1035 (9th Cir. 2024) (materiality of misrepresentation to reasonable person creates inference of reliance justifying predominance class finding); *Montera v. Premier Nutrition Corp.*, 111 F.4th 1018, 1034 (9th Cir. 2024) (upholding class certification on predominance based upon materiality of misrepresentation to reasonable consumer); *Hellman v. Polaris Indus., Inc.*, 2024 WL 4008132, *4 (C.D. Cal. July 16, 2024) (presumption or inference of reliance where misrepresentation is material, with materiality defined as whether reasonable man would attach importance to its existence in choosing action).

1 reliance or a justify a common sense inference of reliance by the
2 nature of the claims, even absent the fiduciary duty admittedly owed
by Defendants to Plaintiffs, thus satisfying predominance;²⁴

- 3 ○ Whether reliance is even necessary for the profiteering (RICO)
4 claims, and alternatively whether third party reliance (here, the
5 insurer payors' reliance on the Defendants' false claims establishes
such third party reliance) is sufficient for predominance for a class
Criminal Profiteering claim.²⁵
- 6 ○ Whether reliance can be presumed for the Consumer Protection Act
7 claim.²⁶
- 8 ○ Whether patient reliance is necessary for health care fraud (18
U.S.C. §1347).²⁷
- 9 • Whether the existence, scope, pattern, and course of conduct of
10 Defendants' use of Providence's wRVU compensation system to submit a
11 pattern of false health care claims for Defendants' financial gain and not
for the medical wellbeing of patients (for which every Plaintiff and

12
13 ²⁴ *Owino v. CoreCivic, Inc.*, 60 F.4th 437, 446 (9th Cir. 2022) ("reliance can be inferred on a
14 class-wide basis"); *Torres v. SGE Management, LLC*, 838 F.3d 629, 638, 641 (5th Cir. 2018) (en
15 banc) (common inference of reliance applies to civil RICO class claims because "it follows
16 logically from the nature of the scheme," establishing predominance); *CGC Holding Co. v.*
17 *Broad and Cassel*, 773 F.3d 1076, 1098-99 (10th Cir. 2016) ("In the RICO context, class
certification is proper when 'causation can be established through an inference of reliance where
the behavior of plaintiffs and the members of the class cannot be explained in any way other than
reliance upon the defendant's conduct;'" inference of reliance applied to borrowers in RICO class
action). (quoting *In re Countrywide Fin. Co., Mktg & Sales Litig.*, 277 F.R.D. 586, 603 (S.D.
Cal. 2011)).

18 ²⁵ *Painters and Allied Trades District Council 82 Health Care Fund v. Takeda Pharmaceutical*,
943 F.3d 1243, 1259 (9th Cir. 2019) (patients satisfied reliance on drug manufacturer
misrepresentations and omissions based upon third party reliance of prescribing doctors upon
them) (citing *Bridge v. Phoenix Bond & Indemnity Co.*, [553 U.S. 639 \(2008\)](#)); *Beaver v. Omni*
19 *Hotels Management Co.*, 2023 WL 6120685, *18 (S.D. Cal. Sept. 18, 2023) (finding
20 predominance because direct reliance "is not an element of the RICO statute," citing *Painters*.).
Here, the insurer payors' reliance upon Defendants' false claims establishes such third party
21 reliance).

22 ²⁶ See *Eng v. Specialized Loan Servicing*, 20 Wash.App.2d 435, 452(2021) ("When a plaintiff
alleges deception through omission of a material fact, a rebuttable presumption of reliance
23 applies.") (citing *Deegan v. Windemere Real Estate*, 197 Wn.App. 875, 890 (2017))

24 ²⁷ See *United States v. Salko*, 2008 WL 4006747, *8 (M.D. Pa. Aug. 26, 2008) (patient reliance
not necessary for health care fraud under 18 U.S.C. § 1347).

proposed Class Member was a victim) predominates. Providence has denied, for example, that “its compensation system incentivized or resulted in improper or unnecessary surgeries” (ECF 202:4),²⁸ thereby confirming the predominance of the issue of whether its incentive system caused false claims;

- Whether Providence is liable for the Doctors’ false claims because it was committed by the conduct of another person for which Providence was legally accountable, including as an accomplice, *see* RCW 9A.08.020 and RCW 9A.08.030 and/or pursuant its ostensible and/or apparent authority;
- Whether Providence provided substantial assistance²⁹ to the Doctors in presenting their false claims to health insurers under common law or statutory aiding and abetting law;
- Whether the corporate negligence as detailed in Section IV, *supra*, regarding the facts and law associated with Providence’s duties, actions and inactions, with liability turning on the details of Providence’s action and knowledge predominates, including:
 - Whether permitting the Doctors to engage in a pattern of false claims using Providence’s patients constitutes corporate negligence;
 - Whether incentivizing and participating in a pattern of criminal profiteering acts using Providence’s patients constitutes corporate negligence;
 - Whether Providence performed, or failed to perform, on an ongoing basis, a proper background, credentialing, privileging, supervision and performance review of the Doctors;
 - Whether Providence failed to take timely action to supervise, prevent, or discipline the Doctors’ conduct, including by filing false health care claims to promote and conceal misconduct, and by

²⁸ ECF202:4 (“Defendants deny Plaintiffs’ claims and deny that any class should be certified on any claim. In particular, Providence denies its compensation system incentivized or resulted in improper or unnecessary surgeries or that it otherwise acted improperly or negligently.”).

²⁹ *Perkumpulan Investor Crisis Center Dressel-WGB v. Regal Financial Corp.*, 781 F.Supp.2d 1098, 1114 (W.D. Wash. 2011) (upholding pleading, under Washington law, of pleading aiding and abetting breach of fiduciary duty claim for providing substantial assistance or encouragement to another, or for providing “substantial assistance to the other in accomplishing a tortious result and his own conduct, separately considered, constitutes a breach of duty to the third person”) (quoting Restatement (Second) of Torts § 876 (1979)).

1 failing to create, maintain, or implement any system to detecting and
2 preventing such false claims;

- 3 ○ Whether patients' increased risk of exposure to a medically
4 unnecessary or otherwise improper surgery, or associated false
5 claim billing, was caused by Providence's negligence or deliberate
6 action;
- 7 ○ Whether Providence used appropriate standard of care practices for
8 hiring, supervising, monitoring, or using the wRVU incentive
9 bonuses;
- 10 ○ Whether Providence timely detected the Doctors' conduct and
11 properly had in place and/or applied regulations, laws, rules and the
12 like when hiring, supervising, and monitoring;
- 13 ○ Whether details of this evidence show Providence intended, was
14 reckless as to, or willfully disregarded the unlawful consequences of
15 the Doctors' actions and implemented them for its own financial
16 gain;
- 17 ○ The adequacy and appropriateness of Providence's response to
18 patients' pre-exposure and post-exposure to the Doctors' surgeries;
- 19 ○ The nature and extent of legal claims available to patients as a result
20 of the patient endangerment as confirmed by the Providence
21 settlement and the June 5, 2022 newspaper "message;"
- 22 ○ Whether Providence acted in concert with the Doctors or had the
23 apparent authority to do so;
- 24 ○ Whether Providence violated its detailed institutional
responsibilities, including of its Governing Board, in hiring
credentialing, privileging, and supervising the Doctors, and/or
violated those standards of care;
- Whether the items enumerated here and in Exhibit 9 predominate;
- Whether Defendants fraudulently induced patients through material
misrepresentations or omissions to submit to surgeries that would
be the subject of false health care claims.

- Whether Defendants' course of conduct violating the Consumer Protection Act predominates;
- Whether Defendants' failure to adequately warn patients of the risk of medically unnecessary surgery and details therein predominates;
- How each Providence class member was subject to severe emotional distress upon discovery of the pattern of false claims by the Doctors that occurred with the Settlement Agreement and the Providence newspaper publication to its patients;
- Whether Defendants knew the proceeds used to further the fraudulent scheme were derived from illegal activity, to wit, false health care claims;
- Whether the pattern of profiteering activity was furthered by the concerted efforts of Defendants and Dr. Sandquist to conceal the fact and magnitude of the false claims.

6.16. **Predominance/MultiCare Class.** The common issues which predominate the MultiCare class including whether they were subjected to surgeries by Dr. Dreyer at MultiCare when he should not have been hired by MultiCare at all and whether he was, in fact, unhirable and would not have been hired at MultiCare if Defendants hadn't concealed their pattern of false claims from both health authorities and MultiCare, which evidence includes the months-long investigation conducted by the Washington DOH into Providence's failures to comply with its mandatory reporting requirements, resulting in a five-year administrative ruling of a Plan of Correction with the DOH to which Providence agreed and did not appeal. Since causation for the MultiCare Class stems from the same acts, inactions, and concealments by Providence as alleged in this Complaint, causation is predominantly proven on a class wide basis and not an individualized one. Further,

1 each MultiCare class member was subject to severe emotional distress upon
2 discovery of the pattern of false claims by the Doctors that occurred with the SA and
3 the Providence June 5, 2022 newspaper message.

4
5 6.17. **Superiority:** Class-Plaintiffs and Class members have suffered and
6 will continue to suffer harm and damages as a result of Defendants' actions. Absent
7 a Class Action, most Class members likely would find the cost of litigating their
8 claims prohibitive and/or may not even become informed of their causes of action
9 due to HIPAA confidentiality and how the details of the settlement (and which
10 cases inform the bases of the settlement agreement) are also currently held
11 confidentially. Concentrating class members claims in this District is superior
12 because the headquarters of Providence is located in this District and the claims are
13 all based upon Washington law. Class treatment is superior to multiple individual
14 suits or piecemeal litigation because it conserves judicial resources, promotes
15 consistency and efficiency of adjudication, and provides a forum for all claims,
16 which number in the "hundreds" (according to the Department of Justice). There
17 will be no significant difficulty in the management of this case as a Class action.
18 The identity of each Class member is readily identifiable from Defendants' own
19 records and the records of the DOJ.
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VII. CAUSE OF ACTION: Criminal Profiteering [RCW 9A.82.100 and 9A.82.080]

7.1 Plaintiffs, on behalf of themselves and those similarly situated, reallege and incorporate by reference paragraphs 1 through 6.17 as if fully set forth herein.

7.2 Plaintiffs herein set forth their claim for damages resulting from Defendants' violations of the Washington Criminal Profiteering Act, 9A.82.100 and 9A.82.080.

7.3 Each Defendant is a "person" within the meaning of RCW 9A.04.110(17), and under RCW 9A.82.100(1)(a), and RCW 9A.82.080(1)(a).

7.4 To carry out the profiteering scheme, the Defendants had to complete a course of separate actions which were themselves offenses, and to keep these offenses and their relationship to each other concealed throughout. First, the defendants had to perform a patient surgery, which entailed convincing the patient to undergo the surgery without disclosing the scheme. Second, they had to create the false documentation necessary to present a convincing but false healthcare claim to state, federal and private insurers. Finally, they had to deposit the proceeds of their false claims into their financial accounts without detection of their false origins to pay the ongoing and promotional costs of the profiteering scheme and to generate profits for themselves.

7.5 False claims in violation of RCW 48.80.030 fall at the center of this

1 spectrum of profiteering activity, making it a common and revelatory feature of the
2 pattern of profiteering activity at issue. *See State Farm Mut. Auto. Ins. Co. v. Tri-*
3 *Borough NY Med. Prac. P.C.*, 120 F.4th 59, 80-81 (2d Cir. 2024) (enjoining
4 arbitrations and state court proceedings because individual adjudication of
5 unnecessary medical treatment health care claims obscure and insulate from
6 detection health providers' fraudulent health care claims; single prosecution of
7 pattern of false unnecessary medical claim pattern in RICO suit exposes provider
8 pattern of underlying claim fraud). The Washington false health claim statute, RCW
9 48.80.030, (defined as a profiteering act at RCW 9A.82.010(4)(hh)), states
10 (emphasis added):
11

12
13 (1) A person shall not make or present or cause to be made or presented to a
14 health care payer a claim for a health care payment knowing the claim to be
15 false.

16 (2) No person shall knowingly present to a health care payer a claim for a
17 health care payment that falsely represents that the goods or services were
18 medically necessary in accordance with professionally accepted standards.
19 Each claim that violates this subsection shall constitute a separate offense.

20

21 (4) *A person shall not conceal or fail to disclose any information with*
22 *intent to obtain a health care payment to which the person or any other person*
23 *is not entitled, or to obtain a health care payment in an amount greater than*
24 *that which the person or any other person is entitled.*

25 7.6 The profiteering cycle (the course of conduct at issue) begins with
26 inducing patients to undergo surgery for purposes of making false claims, to wit,
27 false health care claims, theft by deception, and/or money laundering, which

1 themselves are acts of profiteering under RCW 9A.82.010(4)(e), (t), and (aa). The
2 scheme subjected the pre-surgery, the surgery, and the post-op services to increasing
3 patient safety endangerment and injury, without the consent of anyone but
4 Defendants, including employees, agents, and/or contractors of Defendants.
5 PSMMC's neurosurgery supervisor, Dr. Yam, chronicled the pattern of patient
6 injuries that this process caused because of the fraudulent conduct of the Doctors,
7 none of which was shared with any patients at either PROVIDENCE or
8 MULTICARE. After receiving proceeds payments, Defendants then laundered them
9 through their financial institutions, in violation of Washington and federal money
10 laundering laws (*see* 9A.83.020(1)((a) & (b); 18 U.S.C. §§ 1956(a)(1)(A)(i)
11 (promotional) & 1957(a) (transactional)), as part of their continuing pattern of
12 profiteering activity under RCW 9A.82.010(4)(e), (t), and (aa). They then used the
13 resulting unlawful proceeds to promote the scheme and to profit from it, including
14 to conceal the nature of their scheme. 18 U.S.C. §§ 1956(a)(1)(A)(i) & (B).

17 **A. Violation of RCW 9A.82.100³⁰**

18 7.7 Defendants violated RCW 9A.82.100, as further alleged herein, by
19 knowingly engaging in patterns of criminal profiteering activity as set forth in the
20 preceding paragraphs by engaging in the following acts of criminal profiteering
21

22
23 ³⁰ Under RCW 9A.82.100(13), "Private civil remedies under this section are supplemental and
24 not mutually exclusive.").

1 activity for financial gain (“predicate acts”)::

2 7.7.1 false health care claims as defined in RCW 48.80.030
3 (profiteering acts under RCW 9A.82.010(hh) and accomplice liability under
4 RCW 9A.08.020 and RCW 9A.08.030);

5 7.7.2 money laundering as defined in RCW 9A.83.020 and
6 RCW 9A.93.010(7) (RCW 9A.82.010(t)) with the specified unlawful activity
7 being (i) false health care claims under RCW 48.80.030 and accomplice
8 liability under RCW 9A.08.020 and RCW 9A.08.030; (ii) theft under RCW
9 9A.82.010(e) and accomplice liability under RCW 9A.08.020 and RCW
10 9A.08.030; and (iii) the federal offenses of scheming to commit or attempting
11 to commit health care fraud under 18 U.S.C. § 1347, false claims under 18
12 U.S.C. § 287, and money laundering offenses for promoting and concealing
13 specified unlawful activity under 18 U.S.C. §§ 1956(a)(1)(A)(i) & (B), and
14 for conducting transactions in criminally derived property under 18 U.S.C. §
15 1957(a) involving a Federal health care offense under 18 U.S.C. § 1956(7))(F)
16 and 18 U.S.C. § 24(a), and aiding and abetting liability under 18 U.S.C. § 2;
17

18 7.7.3 theft as defined/applied in RCW 9A.82.010(e), including RCW
19 9A.08.020, 9A.08.030, and 9A.08.040.

20 **B. Violation of RCW 9A82.080(1) & (2)**

21 7.8 Defendants violated RCW 9A82.080(1) & (2) and RCW 9A.08.020 and
22
23
24

1 9A.08.030, as further alleged herein, by: (1) knowingly and willfully receiving the
2 proceeds, directly or indirectly, from a pattern of criminal profiteering activity and
3 using or investing any part thereof in the acquisition of any title to, or any right,
4 interest, or equity in, real property or in the establishment or operation of the
5 enterprise(s) or the alternative enterprise(s) listed in paragraphs 7.29 and 7.30;
6 and/or (2) knowingly and willfully acquiring or maintaining, directly or indirectly,
7 an interest in or control of the enterprise(s) or real property through a pattern of
8 criminal profiteering activity. The pattern of profiteering activity include the
9 profiteering acts alleged in paragraph 7.7. *supra*, and listed in paragraphs 7.21 to
10 7.26 *infra*, which are incorporated herein. Plaintiffs have been injured in their
11 persons, property and business as a result of the Defendants' knowing receipt of the
12 proceeds from the pattern of criminal profiteering activity and their subsequent use
13 and investment, and concealment of their use and investment, in the establishment
14 or operation of the enterprise of Providence or the alternative enterprises. Among
15 the uses of unlawful proceeds include payment of compensation to the doctors and
16 other means of operating the enterprise(s); among the investment of unlawful
17 proceeds is their use to make investments by and through the Treasury Team for
18 profit, for the acquisition of any right, interest, or equity in real property; or for
19 including for purposes of maintaining the enterprise(s) or real property to attract
20 patients and to submit further false health care claims.
21
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1 **C. Violation of RCW 9A82.080(3)**

2 7.9 Defendants violated RCW 9A82.080(3) and RCW 9A.08.020 and
3 9A.08.030, as further alleged herein, by knowingly and willfully conspiring to
4 commit the foregoing criminal profiteering acts and violations of RCW
5 9A.82.080(1) & (2), in violation of RCW 9A.82.080(3).
6

7 7.10 Each plaintiff is a person who sustained injury to his or her person,
8 business, or property by an act of criminal profiteering that is a part of a pattern of
9 criminal profiteering activity under RCW 9A82.100, or by the offenses alleged in
10 RCW 9A82.080(1), (2) & (3).
11

12 7.11 Plaintiffs' injuries were directly and proximately caused by
13 Defendants' violations of the aforementioned offenses.

14 7.12 For each predicate offense, failure by Defendants to return funds
15 obtained as described below is evidence of their intent to commit the predicate act(s)
16 and are part of the pattern of criminal profiteering activity alleged herein.
17

18 **Predicate Acts**

19 **False Health Care Claims, RCW 48.80.030, 9A.08.020 and 9A.08.030**

20 7.13 As set forth herein above, Defendants:

21 7.13.1 presented and/or caused to be presented to health care payors,
22 including federal health care payors, hundreds of claims for a health care
23 payment knowing the claim to be false or fictitious and/or that falsely
24

1 represented that the goods or services were medically necessary in accordance
2 with professionally standards, made material false statements to health care
3 payers for use in determining rights to health care payments, concealed or
4 failed to disclose information with the intent to obtain a health care payment
5 or higher payment to which they are not entitled, and/or acted with deliberate
6 indifference or recklessly to whether the claims submitted were false or
7 fictitious;
8

9 7.13.2 concealed or failed to disclose, having a duty to disclose,
10 material information with intent to obtain and retain health care payments to
11 which they were not entitled, including but not limited to false certifications
12 of medical necessity and failure to disclose noncompliance with 42 U.S.C. §
13 11133(a)(1) of the Healthcare Quality Improvement Act of 1986, and the
14 NPDB guidelines.
15

16 7.14 These acts constituted false health care claims in violation of RCW
17 48.80.030, 9A.08.020 and 9A.08.030.
18

19 **Predicate Acts**

20 **Money Laundering, RCW 9A.83.020(1)(a)&(b), RCW 9A.83.020(5), and**
RCW 9A.08.020 and 9A.08.030

21 7.15 As set forth herein above: Defendants conducted or attempted to
22 conduct financial transactions (to wit, receiving, depositing, and retaining health
23 care payments) involving the proceeds of specified unlawful activity (to wit, a
24

1 scheme to seek, obtain, retain, and redistribute false health care claims, in violation
2 of RCW 48.80.030; theft by deception under RCW 9A.56.030 and 9A.56.040; and
3 the federal offenses of scheming to commit or attempting to commit health care fraud
4 under 18 U.S.C. § 1347;³¹ false claims under 18 U.S.C. § 287; for presenting a “false,
5 fictitious, or fraudulent” claim;³² and money laundering offenses for conducting
6 transactions in criminally derived property under 18 U.S.C. § 1957(a)³³ and
7 promotional money laundering under 18 U.S.C. § 1956(a)(1)(A)(i)³⁴ involving a
8
9
10

11 ³¹ The elements of a health care fraud claim are that the defendant: “(1) knowingly devised a
12 scheme or artifice to defraud a health care benefit program in connection with the delivery of or
13 payment for health care benefits, items, or services; (2) executed or attempted to execute this
14 scheme or artifice to defraud; and (3) acted with intent to defraud.” *United States v. Anderson*, 67
15 F.4th 755, 770 (6th Cir. 2023) (quoting *United States v. Semrau*, 693 F.3d 510, 524 (6th Cir.
16 2012), *cert. denied*, 144 S. Ct. 552, 217 L. Ed. 2d 294 (2024)). The defendant “need not have
17 actual knowledge of this section or specific intent to commit a violation of this section.” 18
18 U.S.C. § 1347(b).

19 ³² The elements of a false claims are: “(1) presenting a claim against the United States, and (2)
20 knowing such claim to be false.” *United States v. Causey*, 835 F.2d 1289, 1292 (9th Cir. 1987).
21 Whether materiality is an element of a section 287 offense is unresolved in this Circuit, *U.S. v.*
22 *St. Luke’s Subacute Care Hosp., Inc.*, 178 Fed. Appx. 711, 713 (9th Cir. 2006) (citing *United*
23 *States v. Taylor*, 66 F.3d 254, 255 (9th Cir. 1995)), and Plaintiffs submit not. *See, e.g., United*
24 *States v. Saybolt*, 577 F.3d 195, 199-200 (3rd Cir. 2009) (materiality unnecessary).

³³ The elements of a violation of 18 U.S.C. § 1957 are that a defendant (1) knowingly engaged or
attempted to engage in a monetary transaction; (2) knew the transaction involved criminally
derived property; (3) that had a value greater than \$10,000; and (4) was, in fact, derived from a
specified unlawful activity. *United States v. Rogers*, 321 F.3d 1226, 1229 (9th Cir. 2003); 9th Cir.
Model Criminal Jury Instruction 8.150.

³⁴ The elements of promotional money laundering via 18 U.S.C. § 1956(a)(1)(A) are that a
defendant (1) “knowing that the property involved in a financial transaction represents the
proceeds of some form of unlawful activity,” (2) “conducts or attempts to conduct such a
financial transaction which in fact involves the proceeds of specified unlawful activity,” (3)
“with the intent to promote the carrying on of specified unlawful activity.” *United States v.*
Wilkes, 662 F.3d 524, 548 (9th Cir. 2011) (quoting *United States v. Cedeno-Perez*, 579 F.3d 54,
57 (1st Cir. 2009)).

1 Federal health care offense as defined under 18 U.S.C. § 1956(7))(F) and 18 U.S.C.
2 § 24(a), both as principals and as aiders and abettors under 18 U.S.C. § 2, RCW
3 9A.08.020 and RCW 9A.08.030, knowing the property was proceeds of that
4 specified unlawful activity and intending to promote the carrying on of specified
5 unlawful activity. The health care fraud specified unlawful activity (18 U.S.C. §
6 1347) consisted of the fraudulent inducement of hundreds of false health care claims
7 and therefore separate offenses by Defendants. *United States v. Awad*, 551 F.3d 930,
8 937-938 (9th Cir. 2009) (each claim “chargeable as a separate count”). Each federal
9 felony falls within Washington’s money laundering statute’s definition of specified
10 unlawful activity under RCW 9A.83.010(7).³⁵ Further, the use of these unlawful
11 proceeds to purchase real estate violates RCW 9A.82.080(1), as does the investment
12 of these proceeds in the operation of the enterprises, including through medical staff
13 compensation. In addition, Defendants knew that the transactions with Plaintiffs’
14 health care payors (*e.g.*, Medicare) and/or with other patients’ health care payors
15 were designed in whole or in part to conceal or disguise the nature, location, source,
16 ownership, or control of the proceeds of specified unlawful activity, and acted
17 recklessly or with willful blindness as to whether the property was proceeds of
18
19
20
21

22
23 ³⁵ Under Washington’s money laundering statute, “Proceedings under this chapter shall be in
24 addition to any other criminal penalties, civil penalties, or forfeitures authorized under state law.”
RCW 9A.83.020(6).

1 specified unlawful activity, in violation of RCW 9A.83.020(1)(b).

2 7.16 In particular, the government and private health care insurers to which
3 Defendants presented, or caused to be presented, false health care claims constitute
4 health care benefit programs pursuant to 18 U.S.C. § 24(b). Defendants knowingly
5 and willfully executed or attempted to execute a scheme or artifice to defraud these
6 health care benefit programs, including but not limited to Medicare, to obtain, by
7 means of false or fraudulent pretenses or representations money or property owned
8 by, or under the custody or control of a health care benefit program in connection
9 with the delivery of, or payment for, health care benefits, items, or services, in
10 violation of 18 U.S.C. § 1347, 18 U.S.C. § 2, and RCW 9A.08.020 and 9A.08.030.
11 Actual knowledge is not required, 18 U.S.C. § 1347(b), and, in any event,
12 Defendants' continuing affirmative acts of concealment establish their knowledge
13 and participation in a scheme to commit healthcare fraud. *United States v. Dearing*,
14 504 F.3d 897, 901-02 (9th Cir. 2007); *United States v. Colton*, 231 F.3d 890, 901 (4th
15 Cir. 2000). Further, deliberate ignorance is sufficient because the known and warned
16 circumstances of the voluminous sustained claim submissions in the late 90%
17 percentiles nationally generating more than a third of Providence's SMMC profits
18 would have put any reasonable person on notice that there was a high probability
19 that the conduct was illegal. *United States v. Walter-Eze*, 896 F.3d 891, 909 (9th Cir.
20 2017) (upholding willful indifference jury instruction in healthcare fraud case base
21
22
23
24

1 upon defendant's failure to investigate). Here, the probability of fraud was also
2 evident from the closely monitored RVU data and related compensation payments
3 making Dreyer the highest paid physician within the Providence system,
4 accompanied by persistent internal staff complaints. The Defendants' subsequent
5 investment and use of these unlawful proceeds of health care fraud violates RCW
6 9A.83.020 and RCW 9A.08.020 and 9A.08.030 and 18 U.S.C. §§ 1956(a) &
7 1957(a). Among the many promotional transactions in unlawful false claim proceeds
8 was their use by Defendants to compensate Doctors Dreyer and Elskens in amounts
9 calculated by Providence using its RVU incentive compensation system.
10

11 7.17 These acts constitute money laundering in violation of RCW
12 9A.83.020(1)(a)&(b), RCW 9A.08.020 and 9A.08.030, and 18 U.S.C. §§ 1957(a) &
13 2, with remedies see e.g., RCW 9A.83.020(5).
14

15 **Predicate Acts**
16 **Theft, RCW 9A.56.030 & 9A.56.040 & 9A.08.020/9A.08.030**

17 7.18 As set forth herein above: Defendants, used a common scheme and plan
18 knowingly to defraud Plaintiffs, patient class members, the health insurance
19 programs and/or governmental insurance entities (e.g., Medicare/Medicaid), to
20 wrongfully obtain property (including financial payments of false health care claims)
21 by knowingly misrepresenting information about the health care provided, the
22 medical necessity of it, and/or other improper issues, with the intent to deprive them
23

1 of that property. Through a common scheme and plan of false pretenses, material
2 omissions, and concealment, Defendants intended to, and did, deprive plaintiffs of
3 their property, including payments of money and earned entitlement to health care
4 insurance benefits.

5
6 7.19 The property or services described herein exceed \$750 in value.

7 7.20 These acts constituted theft in the first or second degree, in violation of
8 RCW 9A.56.030 & 9A.56.040 & 9A.08.020 & 9A.08.030.

9
10 **Pattern of Related Profiteering Acts**

11 7.21 Defendants engaged in a pattern of related criminal profiteering
12 offenses, as described in this claim, repeatedly and continuously during the relevant
13 time period, including three or more acts of profiteering violations of RCW
14 9A.56.030, RCW 48.80.030, and 9A.83.020(1)(a) & (b), and RCW 9A.08.020 and
15 9A.08.030.

16 7.22 The multiple acts of profiteering activity had the same or similar
17 intents, results, accomplices, victims, and methods of commission. Alternatively,
18 they are otherwise interrelated by distinguishing characteristics, and these
19 characteristics include, in the alternative, a nexus to the same enterprises alleged
20 herein of PHS-WA and PSJH, their insurance payors, and/or governmental insurance
21 entities. None of the acts of profiteering are isolated incidents. The fraudulent acts
22 had the same or similar purposes and results, namely, obtaining undisclosed and
23

1 unlawful profits. The profiteering acts are related to one another, are continuous over
2 a prolonged multi-year period of time, and constitute and/or pose the threat of
3 continuity because Defendants claim in this lawsuit that this pattern of misconduct
4 is lawful and will continue.

5
6 7.23 The last such criminal profiteering activity occurred within five years
7 after the prior incident of profiteering activity.

8 7.24 The criminal profiteering acts had similar purposes: *e.g.*, financial gain
9 to the Defendants.

10 7.25 Each of the Defendants' criminal profiteering acts yielded similar
11 results and caused similar injuries to the Plaintiffs to their person, property and/or
12 business, including damage to their physical being and their finances (both as, *inter*
13 *alia*, to medical expenses and as to lost wages).

14
15 7.26 Because of Defendants' failures to disclose and affirmative acts of
16 concealment, the pattern of criminal profiteering activity was not discoverable until
17 April 12, 2022, when the U.S. Attorney publicly announced its investigative findings
18 regarding Providence, Dr. Dreyer and Dr. Elskens about the misconduct undertaken
19 in combination to commit the profiteering alleged herein.

20
21 **The Enterprise(s)**

22 7.27 Although an enterprise is not a necessary element of a claim under
23 either RCW 9A.82.100 or RCW 9A82.080, to the extent applicable, Plaintiffs allege

1 the following enterprises. An enterprise “includes any individual, sole
2 proprietorship, partnership, corporation, business trust, or other profit or nonprofit
3 legal entity, and includes any ... group of individuals associated in fact although not
4 a legal entity, and both illicit and licit enterprises and governmental and
5 nongovernmental entities.” RCW 9A.82.010(8).
6

7 7.28 Enterprises consist of ongoing organizations, formal or informal, with
8 various associates functioning as a continuing unit. *See Trujillo v. Nw. Tr. Servs.,*
9 *Inc.*, 183 Wn. 2d 820, 839, 355 P.3d 1100 (2015).

10 7.29 The enterprises used in, and with a nexus to, the pattern of criminal
11 profiteering activity under RCW 9A.82.100 include health care insurance providers
12 for the plaintiff Class(es), including government health care insurers (*e.g.*,
13 “governmental” entities U.S. Department of Health and Human Services (HHS); the
14 Defense Health Agency (DHA), acting on behalf of the TRICARE Program; the
15 Federal Health Benefits Program; the U.S. Department of Veterans Affairs (VA)
16 which administers the VA Community Program, and the Washington Health Care
17 Authority (HCA)) and private insurers whose payments promoted the medically
18 unnecessary surgeries and related health care.
19
20

21 7.30 In the alternative, the enterprise used in, and with a nexus to, the pattern
22 of criminal profiteering under RCW 9A.82.100 is Providence, or Providence St.
23 Joseph Health, or the association-in-fact of both. Both Providence and Providence
24

1 St. Joseph Health are legal corporations or legal entities, making them enterprises
2 under RCW 9A.82.010(8). Their association-in-fact enterprise had a common
3 purpose of engaging in the aforesaid course of conduct, through an ongoing
4 organization, and with associates functioning as continuing unit. The enterprise
5 associates PHS-WA and PSJH shared a common purpose, had ongoing relationships
6 among those associated with this enterprise, and had the longevity sufficient to
7 pursue the enterprise's purpose. For example, Providence and Providence St. Joseph
8 Health share offices and have functioned as a continuing unit for years up through
9 the disclosures of April 2022. Further, Providence is a participating provider in the
10 government and private health care insurer enterprises.
11
12

13 7.31 Independent motives and stakes of Dr. Dreyer and Dr. Elskens are
14 sufficient to form the basis of an independent conspirator.

15 7.32 Independent motives and stakes of Providence's employees, agents,
16 and/or contractors, including in respect to concealment and failing to report, are
17 sufficient to form the basis of an independent conspirator.
18

19 7.33 Each of these aforementioned enterprises is a legal entity, that is, a
20 partnership, corporation, business trust, or other profit or nonprofit legal entity,
21 governmental and nongovernmental entities, or an association or group of
22 individuals associated in fact although not a legal entity within the meaning of RCW
23 9A.82.010(8). Each alleged enterprise is an ongoing organization, formal or
24

1 informal, with various associates functioning as a continuing unit.

2 **Causation / Injury and Remedies**

3 7.34 As a direct and proximate result of Defendants' acts or omissions
4 discussed herein, Plaintiff Class(es) and individual Plaintiffs have suffered injuries
5 to their person, business, or property including but not limited to economic loss,
6 pain, suffering, emotional distress, and injury to their physical being, including
7 injuries compensable under RCW 9A.82.080 and 9A.82.100 and 9A.08.020 and
8 9A.08.030. These injuries include damages from the investment of proceeds in, or
9 for the maintenance, establishment, or operation of the enterprise under RCW
10 9A.82.080.
11

12 7.35 Plaintiffs are entitled to an award of damages including but not limited
13 to: compensation for their actual damages; treble damages; a civil penalty of
14 \$250,000 each; injunctive, equitable, disgorgement, and forfeiture relief as set forth
15 in RCW 9A.82.100(2), (3) and (4), and (4)(f); and costs and investigative and
16 attorneys' fees as authorized by RCW 9A.82.100(1)(a).
17

18 7.36 The equitable relief includes, but is not limited to, disgorgement of ill-
19 gotten gains obtained from the profiteering in order to prevent, restrain, and deter
20

1 future unlawful conduct by the Defendants,³⁶ including by use of the bonus incentive
2 compensation scheme.

3 **VIII. CAUSE OF ACTION: NEGLIGENCE, NEGLIGENT**
4 **MISREPRESENTATION**

5 8.1 Plaintiffs, on behalf of themselves and those similarly situated, reallege
6 and incorporate by reference paragraphs 1.1 through 7.36 as if fully set forth herein.

7 8.2 Defendants had common law and statutory duties of care to the
8 Plaintiffs pursuant to RCW 70.41.210, Restatement 2d Torts §§ 302, 311, and 551.
9 In addition, Defendants had fiduciary duties of care, candor, and loyalty, which
10 include the duty disclose material facts to their patients.
11

12 8.3 Pursuant to RCW 70.41.210, Providence, through its employees and
13 agents, including Dr. Elskens, Dr. Dreyer, and JOHN DOE / JANE DOE
14 Defendants, had a mandatory duty, *inter alia*, to report within 15 days to the
15 Washington Department of Health any voluntary restriction or termination of the
16 practice of Dr. Elskens or Dr. Dreyer– “including [their] voluntary resignation” –
17 while they were under investigation or the subject of a proceeding by Providence
18 regarding unprofessional conduct, or in return for Providence not conducting such
19

20
21
22 ³⁶ See e.g., *Creel v. Says*, 2022 WL 4490141 (E.D. Tex. Sept. 27, 2022) (the law does not allow a
23 person to profit from wrongdoing at the expense of another, and disgorgement can be a proper
24 equitable remedy under RICO laws to, *inter alia*, prevent, restrain and deter future unlawful
conduct).

1 an investigation or proceeding, or not taking action against said physicians.

2 8.4 Unprofessional conduct includes (a) incompetence, negligence or
3 malpractice which results in injury or which creates an unreasonable risk that a
4 patient may be harmed; (b) practice beyond the scope of practice as defined by law
5 or rule; (c) misrepresentation or fraud in any aspect of the conduct of the business or
6 profession; (d) the commission of any act involving moral turpitude, dishonesty or
7 corruption relating to the medical profession; or (e) promotion for personal gain of
8 any unnecessary or inefficacious drug, device, treatment, procedure or service. RCW
9 18.130.180(1), (4), (12), (13), (16).
10

11 8.5 As set forth in the preceding paragraphs, Providence and its employees
12 and agents, including JOHN DOE / JANE DOE Defendants, allowed Dr. Elskens
13 and Dr. Dreyer to resign after initiating investigations into their unprofessional
14 conduct as defined herein and did not report them to the DOH as required by RCW
15 70.41.210.
16

17 8.6 Reporting is encouraged by public policy. RCW 70.41.210(5) provides
18 civil immunity to a hospital, its chief administrator, or its executive officer who file
19 a good faith report with the DOH.
20

21 8.7 Providence and its agents/employees also failed to report Dr. Elskens
22 and Dr. Dreyer to the NPDB. As a result of the failure to report, these surgeons
23 continued to conduct unnecessary, improper, and defective procedures for profit
24

1 while harming multiple patients, and defrauding patients and insurance companies,
2 including Medicare and Medicaid.

3 8.8 The purpose of, *inter alia*, this mandatory reporting is to “promote safe
4 and adequate care of individuals in hospitals” and to enforce minimum standards
5 and rules “for the safe and adequate care of patients.” RCW 70.41.010, .030.
6

7 8.9 Plaintiffs, who are/were individuals receiving care at Providence
8 SMMC and at MultiCare, were within the class of individuals for whose special
9 benefit this mandatory reporting statute was enacted – *e.g.*, for their safe and
10 adequate care.
11

12 8.10 Given the above and the allegations contained herein, Providence owed
13 an implied statutory duty of care and a common law duty of care to each Plaintiff in
14 the Class(es) to report Dr. Elskens and Dr. Dreyer.

15 8.11 Pursuant to § 302 of the Restatement (Second) of Torts, Defendants had
16 a duty of care to the Providence and MultiCare patients of the Doctors because they
17 realized, or should have realized that their conduct involved an unreasonably high
18 risk of harm to which they exposed these patients through the Doctors’ conduct
19 intended to cause harm, including by concealing and failing to report the “safety
20 pause” placed upon Dr. Dreyer’s surgeries, and Providence’s threat to report Dr.
21 Elskens unless compensated.
22

23 8.12 Defendants had a duty to disclose to Plaintiffs the doctor misconduct
24

1 and restrictions of privileges based upon their fiduciary relationships and duties. In
2 addition, pursuant to § 551 of the Restatement (Second) of Torts which has been
3 adopted by Washington courts, and also under § 311, which has not yet been adopted
4 in Washington, Defendants negligently misrepresented to third parties, including
5 MultiCare and Dr. Sandquist, false information causing Plaintiffs to be exposed to
6 physical harm, including by MultiCare's reliance upon this information, causing
7 harm to Plaintiffs.³⁷

9 8.13 Defendants breached this implied statutory duty and common law
10 duties when they failed to report Dr. Elskens or Dr. Dreyer to the Washington DOH
11 and the NPDB, and actively concealed Dr. Dreyer's "safety pause," and withheld
12 Dr. Elskens' reportable conduct in exchange for compensation.

14 8.14 As a direct and proximate result of Defendants' breach of the duties
15 owed, the Doctors continued to conduct medically unnecessary or otherwise
16 improper procedures for profit while harming patients and defrauding patients and
17 insurance companies, including Medicare and Medicaid; and each Plaintiff was
18 permanently injured, suffered, and continues to suffer physical disability and pain,
19 medical expenses, and other damages to be fully determined at trial.
20

21
22
23 ³⁷ Restatement (Second) of Torts, § 311, has been considered in Washington State, but was not
24 adopted under the facts of that case. *See Richland Sch. Dist. v. Mabton Sch. Dist.*, 111 Wn. App.
377, 45 P.3d 580 (2002).

1 8.15 It was reasonably foreseeable that Defendants' breach of the duties
2 owed would result in the damages described herein.

3 **IX. CAUSE OF ACTION: CONSUMER PROTECTION ACT (RCW**
4 **19.86)**

5 9.1 Plaintiffs, on behalf of themselves and those similarly situated, reallege
6 and incorporate by reference paragraphs 1.1 through 8.15 as if fully set forth herein.

7 9.2 Unfair methods of competition and unfair and deceptive acts are
8 prohibited in any trade or commerce under RCW19.86.020. As set forth herein
9 above, Defendants used false or deceiving marketing practices and otherwise
10 engaged in unfair or deceptive acts or practices to entice, or that it was reasonably
11 foreseeable would entice, Plaintiffs, among others, to engage in their services and/or
12 the services of their associates or employees, and/or the healthcare industry. These
13 acts were against the public interest because they were committed in course of
14 defendants' business, were part of pattern or generalized course of conduct, were
15 repeated acts committed prior to their act involving plaintiff, had the real and
16 substantial potential for repetition of conduct, and were likely to affect many
17 consumers. Defendants' pattern of misconduct was deceptive (including breaches
18 of statutory and common law duties) which has had a negative impact upon the
19 public which threatens to continue. This constitutes an unfair or deceptive act or
20 practice, for which suit may be brought for damages, injunctive relief, and the costs
21
22
23
24

1 of investigation. RCW 19.86090 & 19.86.093. Specifically, Defendants' deceptive
2 conduct violates the public interest because it injured plaintiffs and/or other patients
3 or had the capacity to do so. Defendants' incentivizing, promoting, and facilitating
4 a pattern of overbilling affects the public interest. Further, by committing statutory
5 criminal offenses, Defendants' conduct is *per se* violative of the public interest, or
6 had the capacity to injure other persons, or has the capacity to injure other persons
7 under RCW 19.86.093. Further, violation of a statutory or common law right to
8 obtain disclosure of material information constitutes injury under the Consumer
9 Protection Act. *Ruiz Torres v. Mercer Canyons, Inc.*, 835 F.3d 1125, 1135 (9th Cir.
10 2016).

11
12
13 9.3 By participating in, or approving this pattern of wrongful conduct,
14 Defendants are liable for it.

15 9.4 These acts or omissions of Defendants occurred in furtherance of trade
16 or commerce. The Defendants' conduct was, at all relevant times, entrepreneurial.

17 9.5 The unfair or deceptive act or practice of Defendants as set forth herein
18 above constitute fraud which affects the public interest and violates the Washington
19 Consumer Protection Act.

20
21 9.6 Plaintiffs specifically relied upon PROVIDENCE to follow state and
22 federal regulations and in their policies, procedures and advertising to be transparent
23 in respect to reporting requirements of allegations of physician misconduct.

1 9.7 As a direct and proximate result of Defendants' violations of the Act,
2 as set forth herein above, Plaintiffs suffered damages.

3 9.8 Defendants are now liable for those damages in an amount fully set
4 forth at trial, but include damages to property and business, the trebling of same, and
5 reasonable attorney fees and costs as allowed under the law.
6

7 **X. CAUSE OF ACTION: MEDICAL NEGLIGENCE (RCW 7.70) vs.**
8 **PROVIDENCE; Dr. JASON A. DREYER, DO; Dr. DANIEL ELSKENS, MD**
 (Providence Plaintiffs, Named and Putative)

9 10.1 Plaintiffs, on behalf of themselves and those similarly situated, reallege
10 and incorporate by reference paragraphs 1.1 through 9.8 as if fully set forth herein.
11

12 10.2 As health care providers, Providence, Dr. Dreyer and Dr. Elskens owed
13 Plaintiffs a duty to comply with the standard of care.

14 10.3 Defendant Providence, through its employees and agents, including Dr.
15 Dreyer and DR. Elskens failed to exercise the degree of care, skill, and learning
16 expected of reasonably prudent health care providers in the same profession or class
17 in the State of Washington acting in the same or similar circumstances. Such conduct
18 proximately caused severe injuries and damages to plaintiffs. Defendant's conduct
19 violated RCW 4.24, 13 RCW 7.70, and other applicable law.
20

21 10.4 The statute of limitations in respect to the medical negligence claims
22 will be tolled on certain patients as a result of the Continuing Course of Treatment
23 Doctrine; and Discovery Rule.
24

XI. CONSENT/INFORMED CONSENT (Providence Patients, Named and Putative)

11.1 Plaintiffs, on behalf of themselves and those similarly situated, reallege and incorporate by reference paragraphs 1.1 through 10.4 as if fully set forth herein.

11.2 As set forth herein above, despite fraudulent reporting otherwise, Defendants breached their duty to inform plaintiffs of all material facts, including risks and alternatives, which a reasonably prudent patient would need to make an informed decision on whether to consent to or reject proposed courses of treatment, including but not limited to the risk of medically unnecessary procedures for which the motive was financial gain and not proper medical treatment. This failure proximately caused injury to plaintiffs.

XII. CORPORATE NEGLIGENCE (Providence Plaintiffs, Named and Putative)

12.1 Plaintiffs, on behalf of themselves and those similarly situated, reallege and incorporate by reference paragraphs 1.1 through 11.2 as if fully set forth herein.

12.2 A medical facility, in this case, Providence, has the following duties: (1) a duty to use reasonable care in the maintenance of safe and adequate facilities and equipment; (2) a duty to select and retain only competent physicians and staff; (3) a duty to oversee all persons who treat patients within its walls as to patient care; and (4) a duty to formulate, adopt and enforce adequate rules and policies to ensure quality care for the patients.

1 12.3 PROVIDENCE breached the afore listed duties by, without limitation:

2 12.3.1 failing to select, retain, and supervise competent staff;

3 12.3.2 failing to ensure of proper oversight of staff;

4 12.3.3 failing to assure proper diagnosis and care;

5 12.3.4 failing to formulate, adopt and enforce adequate rules, policies
6 and/or adopting policing or practices which in themselves created an
7 unnecessary and unreasonable risk to Plaintiff(s);

8 12.3.5 failing to conduct an adequate credentialing background
9 investigation pursuant to best practice guidelines before hiring Dr. Dreyer and
10 DR. Elskens and giving them privileges to see patients and perform surgeries
11 at Providence facilities.

12 12.4 Providence's breach of corporate duties as set forth above directly and
13 proximately led to injuries and damages to the Plaintiffs.

14 12.5 Providence is now liable for the injuries and harm suffered by Plaintiffs
15 as a
16 result of its Corporate Negligence.

17 12.6 Providence is liable for the injuries and harm suffered by Plaintiffs as a
18 result of its Corporate Negligence.

19
20
21
22 **XIII. DISCOVERY RULE**

23 13.1 Plaintiffs, on behalf of themselves and those similarly situated, reallege

1 and incorporate by reference paragraphs 1.1 through 12.6 as if fully set forth herein.

2 13.2 The Discovery Rule regarding statute of limitations applies to
3 individual plaintiffs. *See Pickett v. Holland Am. Line-Westours*, 145 Wn. 2d 178,
4 188, 35 P.3d (2001). For the claims under the criminal profiteering statute,
5 discovery of the pattern of criminal profiteering activity could not reasonably have
6 occurred until the public revelation of the settlement agreement in April 2022. For
7 all claims, discovery was prevented due to intentional concealment and/or fraud
8 and/or the continuing care doctrine until the public revelation of the settlement
9 agreement in April 2022.
10

11 13.3 Here, through their acts and omissions, Defendants deprived plaintiffs
12 of the opportunity to discover the factual bases for these causes of action until April
13 12, 2022.
14

15 **XIV. BREACH OF FIDUCIARY DUTY / FRAUD /**
16 **MISREPRESENTATION (Against Defendants By Patients, Named and**
17 **Putative)**

18 14.1 Plaintiffs, on behalf of themselves and those similarly situated, reallege
19 and incorporate by reference paragraphs 1.1 through 13.3 as if fully set forth herein.

20 14.2 Defendants owed a fiduciary duty to their patients based upon their
21 position of trust, confidence, greater expertise, duty of candor, and dependence.
22 Specifically, Defendants had a fiduciary relationship to the patient class members
23 that gave rise to a duty of care, candor, and loyalty to them requiring Defendants to
24

1 exercise the utmost good faith in dealing with class members, including to fulfill
2 their duty of loyalty to their patients. This duty regarding patient surgeries is held
3 by the doctors and by the corporate defendants. *See Estate of Essex v. Grant County*
4 *Public Hospital District No. 1.*, 3 Wn.3d 1, 546 P.3d 407 (2024). In addition,
5 Providence Defendants (PHS-WA and PSJH and all d/b/a) are liable as accomplices
6 and aiders and abettors of the doctors under RCW 9A.08.020 and 9A.08.030, 18
7 U.S.C. § 2, and the Restatement (Second) of Torts, § 876 (1979). As a result of
8 fiduciary and/or nondelegable duties owed to them by Defendants, Plaintiffs had a
9 right to rely upon Defendants to perform their duties, and this eliminates any burden
10 to establish individual reliance. *Walden v. Bank of New York*, 2024 WL 1556937.
11 *14 (W.D. Pa. April 10, 2024) (fiduciary duty establishes reliance “as a matter of
12 law”); *Wolfe v. Allstate*, 2011 WL 13160292, *3 (M.D. Pa. Jan. 10, 2011); *Seplow*
13 *v. Closing Pro, Inc.*, 717 F.Supp.3d 427, 437 (E.D. Pa. 2024); *Katlin v. Tremologie*,
14 1999 WL 1577980 (Pa. Comm., June 29, 1999). Alternatively, it creates a
15 presumption of reliance or justified a common sense inference of reliance, especially
16 given that Defendants violated this duty by failing to disclose their scheme to profit
17 from false claims. *Waldrup v. Countrywide Financial Corporation*, 2018 WL
18 799156 (C.D. Cal. Feb. 6, 2018); *In re Morning Song Bird Food Litigation*, 320
19 F.R.D. 540,555 (S.D. Cal. 2017).

20
21
22
23 14.3 As set forth herein above, Defendants engaged in acts or omissions

1 breaching these fiduciary duties, which directly and proximately caused damages to
2 Plaintiffs. The patients relied upon Defendants' fiduciary duties in following their
3 advice on the need for medical treatment.

4 14.4 Defendants have statutory and common law duties to inform patients of
5 risks of medical care, and all information needed for patients to make informed
6 healthcare decisions.

7 14.5 Defendants were required to inform patients about the substantially
8 increased risk of treatment by Dr. Dreyer and Dr. Elskens due to their history of
9 performing medically unnecessary and otherwise improper procedures, their
10 submission of false claims to insurers, and the financial incentives created by
11 Providence to promote false claims. Instead, Defendant Providence failed to
12 respond to the continuing warnings about Dr. Dreyer since 2013, including but not
13 limited to its discovery of a breach of sacred trust from its alleged 2017 "thorough
14 investigation" of the Doctors which allegedly led it to terminate them in 2017 and
15 2018, without disclosure to either patients or federal and state authorities as required
16 by law.

17 14.6 Without this information, Plaintiffs were deprived of material facts to
18 inform their treatment decisions.

19 14.7 Defendants knew that in withholding material facts, they were
20 affirmatively misrepresenting information to Plaintiffs.

1 14.8 Defendants intended for Plaintiffs to rely on Defendants, and
2 Defendants' concealments, to make informed healthcare decisions.

3 14.9 Upon information and belief, Defendants were further engaging in false
4 or misleading reporting in medical reports in an effort to conceal evidence of
5 negligent, violative, unethical, and fraudulent treatment practices.
6

7 14.10 Plaintiffs did not know Defendants were concealing material facts and
8 had the right to and did reasonably rely on Defendants to meet its statutory and
9 common law duty to inform them of material facts. Defendants' failure to inform
10 Plaintiffs, in the face of a legal duty to do so, constitutes fraud by concealment, as
11 specifically identified herein.
12

13 14.11 Plaintiffs suffered damages as a result of a reasonable reliance on
14 Defendants' fraud and misrepresentation.

15 **XV. NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS and**
16 **OUTRAGE**

17 15.1 Plaintiffs, on behalf of themselves and those similarly situated, reallege
18 and incorporate by reference paragraphs 1.1 through 14.11 as if fully set forth herein.

19 15.2 Defendants owed Plaintiffs a common law duty not to engage in
20 conduct that would cause the Plaintiffs severe emotional distress.

21 15.3 By misleading Plaintiffs, concealing evidence of negligent, violative,
22 unethical, and fraudulent treatment practices, performing unnecessary and ill-
23

1 advised medical procedures, and operating below the standard of care, Defendants
2 negligently inflicted emotional distress upon Plaintiffs.

3 15.4 Additionally, Defendants' conduct as set forth herein constituted
4 extreme and outrageous conduct that would shock the conscious of an ordinary,
5 reasonable person; which outrageous conduct resulted in Plaintiffs' suffering severe
6 emotional distress.
7

8 **XVI. LOSS OF CONSORTIUM**

9 16.1 Plaintiffs, on behalf of themselves and those similarly situated, reallege
10 and incorporate by reference paragraphs 1.1 through 15.4 as if fully set forth herein.
11

12 16.2 As a direct and proximate result of Defendants negligent and intentional
13 acts or omissions as set forth herein, Plaintiffs' statutorily qualified family members
14 suffered loss of consortium, and special damages if available.

15 **XVII. WRONGFUL DEATH/SURVIVOR ACTIONS**

16 17.1 Plaintiffs, on behalf of themselves and those similarly situated, reallege
17 and incorporate by reference paragraphs 1.1 through 16.2 as if fully set forth herein.
18

19 17.2 Defendants' negligent and intentional acts or omissions as set forth
20 herein resulted in, and/or contributed to the injury and ultimate death of certain
21 claimants, resulting in damages/loss to their estate and to statutorily qualified family
22 members, both individually and/or in their capacity as personal representative of the
23 estate(s).
24

1 17.3 Defendants are liable for those negligent acts or omissions pursuant to
2 Wash. Rev. Code § 4.20.005 (wrongful death and survivor statutes).

3 **XVIII. VICARIOUS LIABILITY**

4 18.1 Plaintiffs, on behalf of themselves and those similarly situated, reallege
5 and incorporate by reference paragraphs 1.1 through 17.3 as if fully set forth herein.
6

7 18.2 Upon information and belief, employees and agents of the defendants,
8 implicated in this cause of action were at all times relevant to this cause of action
9 acting within their official capacity and scope of employment with and for
10 Providence.

11 18.3 Upon information and belief, physicians, employees, or agents alleged
12 to have been negligent in the treatment/care of Plaintiff(s) in this case were either
13 employees, agents in fact, or alternatively, ostensible and/or apparent agents.³⁸
14

15 18.4 Providence is liable for injuries/damage suffered by Plaintiff(s) as a
16 result of the intentional and negligent acts or omissions of their employees, owners,
17 managers, agents, or ostensible agents under the theory of *Respondeat Superior*.
18

19 **XIX. NEGLIGENCE PER SE**

20 19.1 Plaintiffs, on behalf of themselves and those similarly situated, reallege
21 and incorporate by reference paragraphs 1.1 through 18.4 as if fully set forth herein.
22

23 ³⁸ *Adamski v. Tacoma General Hospital*, 20 Wn. App. 98, 112, 579 P.2d 970 (1978) (hospitals
24 are liable for the doctors who work at them).

1 19.2 Certain of the acts of the Defendants set forth herein amount to
2 regulatory and statutory violations. The violation of regulations and statutes
3 constitutes negligence per se.³⁹

4 **XX. RES IPSA LOQUITUR**

5
6 20.1 Plaintiffs, on behalf of themselves and those similarly situated, reallege
7 and incorporate by reference paragraphs 1.1 through 19.2 as if fully set forth herein.

8 20.2 Defendants had exclusive control over the actions and omissions which
9 constituted the sum total of the care provided to Plaintiffs during their pre-surgical,
10 surgical, and post-surgical care.

11 20.3 Defendants had exclusive control over the actions and omissions which
12 ultimately resulted in the defrauding of Plaintiffs and their medical insurance
13 providers, including Medicare and Medicaid.

14 20.4 Defendants acted intentionally to conceal the fraud in respect to
15 regulatory reporting, billing, and patient medical records as set forth herein above.

16 20.5 As a result of this concealment and fraud, Plaintiffs had no ability to
17 take action on their own behalf to avert the injuries and damages cause by the
18 Defendants negligent and intentional acts or omissions which caused Plaintiffs to
19
20

21
22
23 ³⁹ Restatement (Third) of Torts §14 states in relevant part that an actor is negligent per se if that
24 actor violates a statute that is designed to protect against the type of accident or harm caused by
the actor's conduct, and the plaintiff is someone the statute is designed to protect.

1 suffer injuries and damages.

2 20.6 The injuries and damages sustained by the Plaintiffs here do not occur
3 in the absence of negligence or intentional actions in variance with statute and
4 regulatory authority undertaken by the medical care team.

5 20.7 Defendants are now liable for the damages Plaintiff has suffered as a
6 result of their negligence pursuant to the doctrine of *Res Ipsa Loquitur*.

7 **XXI. UNJUST ENRICHMENT (Providence Plaintiffs, Named and Putative)**

8 21.1 Plaintiffs, on behalf of themselves and those similarly situated, reallege
9 and incorporate by reference paragraphs 1.1 through 20.7 as if fully set forth herein.

10 21.2 With each and every payment received as described herein, each
11 Defendant received a benefit at a Plaintiff's expense, and the circumstances make it
12 unjust for the Defendant to retain the benefit without payment.

13 21.3 Defendants are liable for the damages to Plaintiff for unjust enrichment,
14 including restitution and disgorgement.

15 **XXII.DISGORGEMENT**

16 22.1 Plaintiffs, on behalf of themselves and those similarly situated, reallege
17 and incorporate by reference paragraphs 1.1 through 21.3 as if fully set forth herein.

18 22.2 In violation of their common law, equitable, and statutory duties, *see*
19 *e.g.*, RCW 9A.82 *et seq* and RCW 9A.83.020(5) as alleged herein, Defendants
20 profited from their wrongful conduct, and these profits must be disgorged in order
21

1 to deter the continuation of this wrongful conduct.

2 22.3 Defendants have obtained ill-gotten profits from their misconduct,
3 including payments from federal and state governments, and from health insurers
4 and patients. These payments are proximately caused by the aforesaid violations,
5 and can be reasonably approximated.
6

7 22.4 Disgorgement of these ill-gotten profits is necessary to deter further
8 violations.

9 **XXIII. WAIVER OF PRIVILEGE**

10 23.1 Plaintiffs, on behalf of themselves and those similarly situated, reallege
11 and incorporate by reference paragraphs 1.1 through 22.4 as if fully set forth herein.
12

13 23.2 Waiver of the physician-patient privilege under RCW 5.60.060(4)(b)
14 does not waive or release any other rights or privileges, including those related to
15 the physician-patient relationship, other than the privilege set out in the above-cited
16 statute.

17 **XXIV. PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiffs pray for judgment against Defendants in their
19 favor and in favor of the Class as follows:
20

21 24.1 Finding that this action is properly maintainable as a Class action
22 pursuant to CR 23(b)(2), 23(b)(3) and 23(c)(4), and certifying each Class.

23 24.2 Finding the Plaintiffs are prevailing parties against each Defendant,
24

1 jointly and severally, for violations of RCW 9A.82.100 and RCW 9A.82.080
2 (Criminal Profiteering) in connection with RCW 9A.08.020 and 9A.08.030 and
3 award Plaintiffs compensation equal to their actual damages, a tripling of those
4 damages, a civil penalty of \$250,000, injunctive and remedial relief as set forth in
5 RCW 9A.82.100(2), (3), and (4), and forfeiture under RCW 9A.82.100(4)(f).
6

7 24.3 Awarding Plaintiffs reasonable investigative and attorneys' fees and
8 costs under RCW 9A.82.100(1)(a).

9 24.4 Finding the Plaintiffs are prevailing parties against each Defendant,
10 jointly and severally, for violations of RCW 19.86 (Consumer Protection Act) and
11 award Plaintiffs damages as allowed under the Act, including a tripling of damages
12 and reasonable attorney fees and costs as allowed under the law.
13

14 24.5 Finding Plaintiffs to be the prevailing parties against each Defendant
15 for violations of common law and statutory duties of care under RCW 70.41.210,
16 Restatement 2d Torts §§ 302, 311, and 551, which resulted in general and special
17 damages to be determined at trial.
18

19 24.6 Finding Defendants were otherwise negligent in their acts as outlined
20 above, including for accomplice liability and for providing substantial assistance.

21 24.7 Finding Defendants' negligence resulted in injury to each Plaintiff.

22 24.8 Ordering Defendants to identify all Class Plaintiffs pursuant to their
23 records.
24

1 24.9 For compensatory damages suffered by Plaintiffs and Class resulting
2 from any and all claims pled herein, in amounts to be proven at trial.

3 24.10 For unjust enrichment, Plaintiffs seek restitution and disgorgement.

4 24.11 For costs and disbursements.

5 24.12 For statutory attorney fees.

6 24.13 For private forfeiture relief, see RCW 9A.82.100(4)(f).

7 24.14 For a forfeiture money judgment in the amount of no less than
8 \$22,690,458.

9 24.15 For disgorgement of ill-gotten gains obtained as a result of Defendants'
10 breach of their duties to the Plaintiffs, as a legal and equitable remedy, including
11 through criminal profiteering, breach of fiduciary or statutory duty, or benefitting
12 from unjust enrichment.

13 24.16 If Defendants bring any frivolous or unfounded defenses, for attorneys'
14 fees and costs pursuant to RCW 4.84.185 and/or Rule 11 of the Superior Court Civil
15 Rules.

16 24.17 For statutory interest on the judgment from the date judgment is entered
17 until paid in full.

18 24.18 For prejudgment interest on the special damages.

19 24.19 For prejudgment interest on liquidated damages.

20 24.20 All damages allowed under RCW 4.20.010, RCW 4.20.20, RCW
21
22
23
24

1 4.20.046, RCW 4.20.060, and RCW 4.24.010, as applicable.

2 24.21 By publishing a newspaper solicitation to the Doctors' patients to
3 contact and communicate with Providence about their surgical treatment by the
4 Doctors, Providence acknowledged the need for, and promoted the need for future
5 medical treatment of the plaintiff patients by Providence, creating the prospect of
6 future patient injury from being subjected to the same pattern of wRVU
7 compensation scheme. Furthermore, because Plaintiffs' future medical care will rely
8 upon the accuracy and thoroughness of the record of the Doctor's care of the patients,
9 they face the prospect of future injury from the false and misleading records
10 generated by the pattern and practices of the fraudulent scheme. For entry of
11 equitable nonmonetary remedies and a permanent injunction, including but not
12 limited to as authorized in RCW 9A.82.100(2), (3), (4) and (4)(f):

15 24.21.1 enjoining Defendants from utilizing any form of
16 productivity bonus metric scheme that encourages surgeons to engage
17 in high volume patient care, or increased complex surgical procedures.

18 24.21.2 requiring Defendants to provide open public access
19 to peer review materials and credentialing files for all surgeons.

20 24.21.3 requiring Defendants to disclose the names and
21 contact information for putative members of all Classes and/or to assist
22 Plaintiffs' counsel in identifying and notifying class members of their
23

rights under this action;

24.21.4 divesting and disgorging Defendants of the
proceeds of their profiteering activity.

24.22 For such other and further relief as the Court may deem just and
equitable.

24.23 The Plaintiffs reserve the right to elect remedies if there is a
determination of a conflict between claims or remedies.

XXV. DEMAND FOR JURY TRIAL

Plaintiffs hereby demand that all causes of action pled herein be tried to a
12-person jury with sufficient alternates to assure complete justice without
interference or delay.

DATED THIS 23rd day of June, 2025.

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